

MONTANA LEGISLATIVE HISTORY

Chapter 492 ~~19~~ 2001

Bill H 120 S _____

Original bill & history Xc

H. Committee on BUSINESS & LABOR

Hearing Date(s) 1/11 Xc

EXEC ACTION 1/17 Xc

_____c

_____c

Date Out _____c

S. Committee on BUSINESS & LABOR

Hearing Date(s) 3/1 Xc

EXEC ACTION 3/16 Xc

_____c

_____c

Did this bill originate in an interim committee? ____Yes ____No

Committee _____

Report _____

3/07	Committee Executive Action--Bill Concurred as Amended	9	0
3/08	Committee Report--Bill Concurred as Amended		
3/09	Revised Fiscal Note Requested		
3/10	2nd Reading Concurred on Voice Vote	39	0
3/12	Revised Fiscal Note Received		
3/12	3rd Reading Concurred	49	0
	Returned to House with Amendments		
3/13	Revised Fiscal Note Printed		
4/10	2nd Reading Senate Amendments Concur Motion Failed	50	50
4/10	2nd Reading Senate Amendments Not Concurred	93	7
4/10	Conference Committee Appointed		
4/11	Conference Committee Appointed		
4/16	Conference Committee Dissolved		
4/16	Conference Committee Appointed		
4/17	Hearing		
4/17	Conference Committee Report Received		
4/17	Conference Committee Report Received		
4/17	2nd Reading Conference Committee Report Adopted on Voice Vote	50	0
4/18	3rd Reading Conference Committee Report Adopted	49	0
4/18	2nd Reading Conference Committee Report Adopted	88	11
4/19	3rd Reading Conference Committee Report Adopted	89	11
4/19	Sent to Enrolling		
4/20	Returned from Enrolling		
4/20	Signed by Speaker		
4/20	Signed by President		
4/21	Transmitted to Governor		
4/30	Signed by Governor		
4/30	Chapter Number Assigned		
	Chapter Number 425		
	Effective Date: 4/30/2001 - All Sections		

HB 120 Introduced by McKenney

LC0227 Drafter: B. Campbell

Generally Revise Professional Licensing Laws

By Request of Department of Commerce

9/25	Fiscal Note Needed		
12/19	Introduced		
12/26	Fiscal Note Requested		
12/28	Referred to Business and Labor		
1/05	Fiscal Note Received		
1/05	Fiscal Note Printed		
1/11	Hearing		
1/17	Committee Executive Action--Bill Passed as Amended	19	0
1/18	Committee Report--Bill Passed as Amended		
1/22	2nd Reading Passed	76	23
1/23	3rd Reading Passed	83	17
	Transmitted to Senate		
1/24	Referred to Business and Labor		
1/24	Revised Fiscal Note Requested		
1/29	Revised Fiscal Note Received		
1/29	Fiscal Note Printed		
3/01	Hearing		
3/07	Committee Executive Action--Bill Concurred as Amended	7	2
3/07	Committee Report--Bill Concurred as Amended		

HOUSE BILLS AND RESOLUTIONS

345

3/13	2nd Reading Concurred as Amended on Voice Vote	49	0
3/14	3rd Reading Concurred	50	0
	Returned to House with Amendments		
4/11	2nd Reading Senate Amendments Concurred	95	2
4/12	3rd Reading Passed as Amended by Senate	85	14
4/12	Sent to Enrolling		
4/17	Returned from Enrolling		
4/19	Signed by Speaker		
4/21	Signed by President		
4/23	Transmitted to Governor		
5/01	Signed by Governor		
5/01	Chapter Number Assigned		
	Chapter Number 492		
	Effective Date: 5/01/2001 - Sections 11 and 75-77		
	Effective Date: 10/01/2001 - Sections 1-10, 12-47, 49-74, and 78		
	Effective Date: 10/01/2005 - Section 48		

HB 121 Introduced by Mood

LC0601 Drafter: McClure

Increase Per-ANB and Basic Entitlements for Public Schools

By Request of Governor

11/21	Fiscal Note Needed		
12/19	Introduced		
12/26	Fiscal Note Requested		
12/28	Referred to Education		
1/11	Fiscal Note Received		
1/15	Fiscal Note Printed		
2/09	Hearing		
3/12	Committee Executive Action--Bill Passed as Amended	11	7
3/12	Committee Report--Bill Passed as Amended		
3/14	2nd Reading Passed as Amended	57	42
3/14	Rereferred to Appropriations		
3/20	Hearing		
3/21	Committee Executive Action--Bill Passed as Amended	13	5
3/21	Committee Report--Bill Passed as Amended		
3/23	Revised Fiscal Note Requested		
3/23	2nd Reading Passed as Amended	74	25
3/23	Segregated from Committee of the Whole Report	56	43
3/23	Rereferred to Taxation		
3/26	Revised Fiscal Note Received		
3/27	Committee Executive Action--Bill Passed as Amended	11	9
3/27	Committee Report--Bill Passed as Amended		
3/28	Revised Fiscal Note Printed		
3/28	2nd Reading Passed as Amended	80	18
3/29	3rd Reading Passed	86	14
	Transmitted to Senate		
3/30	Revised Fiscal Note Requested		
3/30	Referred to Taxation		
4/04	Hearing		
4/05	Revised Fiscal Note Received		
4/09	Committee Executive Action--Bill Concurred as Amended	8	0
4/09	Committee Report--Bill Concurred as Amended		
4/10	2nd Reading Concurred as Amended	33	15
4/11	Revised Fiscal Note Printed		
4/11	3rd Reading Concurred	33	17

HOUSE BILL NO. 120
INTRODUCED BY J. MCKENNEY
BY REQUEST OF THE DEPARTMENT OF COMMERCE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PROFESSIONAL LICENSING LAWS; ELIMINATING THE TWO CONSECUTIVE TERM LIMIT FOR ALTERNATIVE HEALTH CARE BOARD MEMBERS; ALLOCATING THE BOARD OF PSYCHOLOGISTS TO THE DEPARTMENT OF COMMERCE FOR ADMINISTRATIVE PURPOSES; ELIMINATING CERTAIN REQUIREMENTS FOR CERTAIN MEMBERS OF THE BOARD OF REAL ESTATE APPRAISERS; CLARIFYING REQUIREMENTS FOR MEMBERS OF THE BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS; REPEALING THE LICENSE FEE EXEMPTION FOR PERSONS IN MILITARY SERVICE; PROVIDING A GENERAL DEFINITION OF "QUORUM" FOR BOARDS AND ELIMINATING INDIVIDUAL BOARD DEFINITIONS OF "QUORUM"; PROVIDING THAT MENTAL INTENT IS NOT A PREREQUISITE TO UNPROFESSIONAL CONDUCT; ELIMINATING AN EXEMPTION FROM LICENSING REQUIREMENTS FOR COMMISSIONED MEDICAL OFFICERS OF THE ARMED FORCES; CLARIFYING SUPERVISION REQUIREMENTS FOR DENTAL AUXILIARY PERSONNEL; ELIMINATING THE REQUIREMENT THAT THE BOARD OF NURSING ACT JOINTLY WITH THE BOARD OF MEDICAL EXAMINERS IN ADOPTING RULES; ELIMINATING CERTAIN QUALIFICATIONS FOR THE EXECUTIVE DIRECTOR OF THE BOARD OF NURSING; CLARIFYING ISSUING AND RENEWAL PERIODS FOR NURSES' LICENSES; CHANGING THE MEDICAL EVALUATION REQUIREMENTS REGARDING THE DISPENSING OF HEARING AIDS; REVISING THE CALCULATION OF LATE FEES FOR PSYCHOLOGISTS' LICENSE RENEWALS; ELIMINATING SINGEING FROM THE DEFINITION OF "PRACTICE OF BARBERING"; ELIMINATING CERTAIN QUALIFICATIONS FOR THE EXECUTIVE DIRECTOR OF THE BOARD OF OUTFITTERS; ELIMINATING CERTAIN QUALIFICATIONS FOR THE EXECUTIVE SECRETARY OF THE BOARD OF REALTY REGULATION; ELIMINATING BROKER ASSOCIATE AND BROKER OWNER DESIGNATIONS FOR REAL ESTATE; PROVIDING FOR TEMPORARY LICENSURE OF OUT-OF-STATE APPRAISERS; GENERALLY REVISING STATUTES PERTAINING TO ARCHITECTURE AND PROVIDING FOR LICENSE VERIFICATION; CHANGING REQUIREMENTS FOR LANDSCAPE ARCHITECTS; GENERALLY REVISING STATUTES PERTAINING TO PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS AND SUBSTITUTING LICENSURE FOR REGISTRATION; AMENDING SECTIONS 2-15-1840, 2-15-1851, 2-15-1868, 2-15-1873, 23-3-401, 37-1-131, 37-3-103, 37-3-204, 37-3-211, 37-4-202, 37-4-408, 37-8-202, 37-8-204, 37-8-431, 37-12-201, 37-14-201, 37-15-201, 37-16-201, 37-16-303,

37-17-201, 37-17-306, 37-18-201, 37-19-202, 37-24-201, 37-26-202, 37-28-103, 37-30-101, 37-47-202, 37-50-201, 37-51-102, 37-51-209, 37-51-302, 37-51-309, 37-51-315, 37-60-201, 37-65-201, 37-65-303, 37-65-304, 37-65-308, 37-66-301, 37-66-304, 37-67-101, 37-67-102, 37-67-103, 37-67-201, 37-67-204, 37-67-301, 37-67-303, 37-67-304, 37-67-305, 37-67-306, 37-67-308, 37-67-309, 37-67-310, 37-67-311, 37-67-312, 37-67-314, 37-67-315, 37-67-316, 37-67-318, 37-67-320, 37-67-321, 37-67-331, 37-67-332, 37-68-201, 37-69-201, AND 70-22-103, MCA; REPEALING SECTIONS 10-1-605, 37-2-111, AND 37-66-305, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-15-1840, MCA, is amended to read:

"2-15-1840. Alternative health care board -- composition -- terms -- allocation. (1) There is an alternative health care board.

(2) The board consists of six members appointed by the governor with the consent of the senate.

The members are:

(a) two persons from each of the health care professions regulated by the board who have been actively engaged in the practice of their respective professions for at least 3 years preceding appointment to the board;

(b) one public member who is not a member of a profession regulated by the board; and

(c) one member who is a Montana physician whose practice includes obstetrics.

(3) The members must have been residents of this state for at least 3 years before appointment to the board.

(4) All members shall serve staggered 4-year terms. ~~A member may not be appointed for more than two consecutive terms.~~ The governor may remove a member from the board for neglect of a duty required by law, for incompetency, or for unprofessional or dishonorable conduct.

(5) The board is allocated to the department for administrative purposes only, as prescribed in 2-15-121.

(6) The board is designated a quasi-judicial board for the purposes of 2-15-124, except that one member of the board need not be an attorney licensed to practice law in this state."

Section 2. Section 2-15-1851, MCA, is amended to read:

"2-15-1851. Board of psychologists. (1) There is a board of psychologists.

(2) The board consists of six members appointed by the governor with the consent of the senate. Two members must be licensed psychologists in private practice, one member must be a licensed psychologist in public health, one member must be a licensed psychologist engaged in the teaching of psychology, and two members must be from the general public. A member may not serve consecutive 5-year terms but may be reappointed after 5 years following the termination of the previous appointment.

(3) Members shall serve staggered 5-year terms.

(4) The board is allocated to the department for administrative purposes only, as prescribed in 2-15-121."

Section 3. Section 2-15-1868, MCA, is amended to read:

"2-15-1868. Board of real estate appraisers. (1) There is a board of real estate appraisers.

(2) The board consists of five members appointed by the governor with the consent of the senate.

(3) Three members must be licensed or certified real estate appraisers, and two members must be representatives of the public who are not engaged in the occupation of real estate appraisal.

~~(4) Only one member of the board may be primarily affiliated with the same recognized appraisal group defined by the appraisal foundation.~~

~~—— (5) (a) Before January 1, 1992, a real estate appraiser board member must be a designated member of a national real estate appraisal organization that requires for membership appraisal experience, certain educational qualifications, successful completion of an examination, and adherence to the standards of professional appraisal practice.~~

~~—— (b) On and after January 1, 1992, three real estate appraiser board members must be certified real estate appraisers.~~

~~(6)~~(4) Members shall serve staggered 3-year terms. A member may not serve for more than two consecutive terms.

~~(7)~~(5) The board is allocated to the department for administrative purposes only, as prescribed in 2-15-121.

~~(8)~~(6) A board member may be removed from the board by the governor for neglect or cause.

~~(9)~~(7) The board shall meet at least once each calendar quarter to transact its business. ~~Three members constitute a quorum for transacting business.~~

~~(10)~~(8) The board shall elect a ~~chairman~~ presiding officer from among its members.

~~(11)~~(9) A board member ~~shall~~ must receive compensation and travel expenses, as provided in 37-1-133."

Section 4. Section 2-15-1873, MCA, is amended to read:

"2-15-1873. Board of professional engineers and professional land surveyors. (1) There is a board of professional engineers and professional land surveyors.

(2) The board consists of nine members appointed by the governor with the consent of the senate. The members are:

(a) five professional engineers who have been engaged in the practice of engineering for at least 12 years and who have been in responsible charge of engineering teaching or important engineering work for at least 5 years and ~~registered~~ licensed in Montana for at least 5 years. No more than two of these members may be from the same branch of engineering.

(b) two professional and practicing land surveyors who have been engaged in the practice of land surveying for at least 12 years and who have been in responsible charge of land surveying or important land surveying work for at least 5 years and ~~registered~~ licensed in Montana for at least 5 years;

(c) two representatives of the public who are not engaged in or directly connected with the practice of engineering or land surveying.

(3) Each member ~~shall~~ must be a citizen of the United States and a resident of this state. A member, after serving three consecutive terms, ~~shall~~ may not be reappointed.

(4) (a) Except as provided in subsection (4)(b), each member shall serve for a term of 4 years.

(b) The governor may remove a member for misconduct, incompetency, or neglect of duty; or for any other sufficient cause and may shorten the term of one public member so that it is not coincident with the term of the other public member.

(5) The board is allocated to the department for administrative purposes only, as prescribed in 2-15-121."

Section 5. Section 23-3-401, MCA, is amended to read:

"23-3-401. Board organization -- compensation -- ~~meetings~~ -- department to keep records. (1) The board shall annually elect officers as it considers necessary. ~~Two of the members of the board constitute a quorum to do business, and except as provided in 23-3-402, the concurrence of at least two members~~

~~is necessary to take board action:~~

(2) The members of the board are entitled to compensation and expenses, as provided in 37-1-133.

(3) The department shall keep a record of the board's proceedings, which are public records subject to public inspection."

Section 6. Section 37-1-131, MCA, is amended to read:

"37-1-131. Duties of boards -- quorum required. Each board within the department shall:

(1) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within its jurisdiction;

(2) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within its jurisdiction. The hearings must be conducted by a hearing examiner when required under 37-1-121(1).

(3) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (2), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71 or 72;

(4) pay to the department its pro rata share of the assessed costs of the department under 37-1-101(6);

(5) consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

(6) A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business."

NEW SECTION. **Section 7. Mental intent -- unprofessional conduct.** A licensee may be found to have violated a provision of 37-1-316 or a rule of professional conduct enacted by a governing board without proof that the licensee acted purposefully, knowingly, or negligently.

Section 8. Section 37-3-103, MCA, is amended to read:

"37-3-103. Exemptions from licensing requirements. (1) This chapter does not prohibit or require

a license with respect to any of the following acts:

- (a) the gratuitous rendering of services in cases of emergency or catastrophe;
- (b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if the physician has any established or regularly used hospital connections in this state or maintains or is provided with, for the physician's regular use, an office or other place for rendering the services, the physician must possess a license to practice medicine in this state.
- (c) the practice of dentistry under the conditions and limitations defined by the laws of this state;
- (d) the practice of podiatry under the conditions and limitations defined by the laws of this state;
- (e) the practice of optometry under the conditions and limitations defined by the laws of this state;
- (f) the practice of osteopathy under the conditions and limitations defined in chapter 5 of this title for those doctors of osteopathy who do not receive a physician's certificate under this chapter;
- (g) the practice of chiropractic under the conditions and limitations defined by the laws of this state;
- (h) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;
- (i) the performance by commissioned medical officers ~~of the armed forces of the United States,~~ of the United States public health service, or of the United States department of veterans affairs of their lawful duties in this state as officers;
- (j) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses or of midwife services by registered nurse-midwives under the supervision of a licensed physician;
- (k) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this chapter. The board may require a resident physician to be licensed if the physician otherwise engages in the practice of medicine in the state of Montana.
- (l) the rendering of services by a physical therapist, technician, or other paramedical specialist under the appropriate amount and type of supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a paramedical specialist;
- (m) the rendering of services by a physician assistant-certified in accordance with Title 37, chapter 20;

(n) the practice by persons licensed under the laws of this state to practice a limited field of the healing arts, and not specifically designated, under the conditions and limitations defined by law;

(o) the execution of a death sentence pursuant to 46-19-103;

(p) the practice of direct-entry midwifery. For the purpose of this section, the practice of direct-entry midwifery means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or the postpartum period. Except as authorized in 37-27-302, a direct-entry midwife may not dispense or administer a prescription drug, as those terms are defined in 37-7-101.

(q) the use of an automated external defibrillator pursuant to Title 50, chapter 6, part 5.

(2) Licensees referred to in subsection (1) who are licensed to practice a limited field of healing arts shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses and, with the exception of those licensees who hold a medical degree, may not use the title "M.D." or any word or abbreviation to indicate or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed."

Section 9. Section 37-3-204, MCA, is amended to read:

"37-3-204. Meetings. The board shall hold meetings for examinations and for other business properly before the board at least twice annually at times and places set by the board. The president of the board may call special meetings ~~he that the president~~ considers advisable or necessary. ~~Four members of the board constitute a quorum."~~

Section 10. Section 37-3-211, MCA, is amended to read:

"37-3-211. Executive secretary. To perform the services provided for in 37-3-203(5), the department shall hire ~~a person~~ an executive secretary selected by the board, ~~who:~~

~~—— (1) is a citizen of the United States;~~

~~—— (2) is of good moral character; and~~

~~—— (3) holds at least a postgraduate degree from an accredited college or university or has equivalent experience. The degree or experience need not be in the field of medicine."~~

Section 11. Section 37-4-202, MCA, is amended to read:

"37-4-202. Meetings -- notice -- ~~quorum~~ records. (1) The board shall meet at least once each

year in this state at the call of the president and secretary-treasurer. Five days' notice must be given by the department to board members of the time and place of the meeting of the board.

(2) Meetings held for the purpose of examining candidates for a license to practice dentistry in this state may not exceed 6 days.

(3) ~~Six members of the board constitute a quorum for the transaction of business. Its Board~~ proceedings are open to public inspection in cases of public interest unless a privacy issue is involved.

(4) Money collected by the department under this chapter must be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

(5) The department shall keep a complete record of meetings and proceedings of the board and shall keep a complete account of money received and disbursements made by the department."

Section 12. Section 37-4-408, MCA, is amended to read:

"37-4-408. Auxiliary personnel -- employment, duties, and limitations. A dental auxiliary is a person other than a licensed dental hygienist employed by a licensed dentist. The board may, within the limitations of this chapter, adopt rules that define the qualifications and outline the tasks of any unlicensed auxiliary personnel to be employed by a licensed dentist in his the dentist's office, except that nothing in this section may be construed to allow the board by rule to provide for delegation by a licensed dentist to any ~~such~~ auxiliary personnel any of the duties prohibited to dental hygienists under 37-4-401 or a prophylaxis. The performance of intraoral tasks by all dental auxiliaries, as permitted by board rules, must be under the direct supervision of ~~the a~~ licensed dentist ~~employing the personnel.~~"

Section 13. Section 37-8-202, MCA, is amended to read:

"37-8-202. Organization -- meetings -- powers and duties. (1) The board shall meet annually and shall elect from among the nine members a president and a secretary. The board shall hold other meetings when necessary to transact its business. ~~A majority of the board constitutes a quorum at any meeting.~~ The department shall keep complete minutes and records of the meetings and rules and orders promulgated by the board.

(2) The board may make rules necessary to administer this chapter. The board shall prescribe standards for schools preparing persons for registration and licensure under this chapter. It shall provide for surveys of schools at times it considers necessary. It shall approve programs that meet the requirements of this chapter and of the board. The department shall, subject to 37-1-101, examine and issue to and

renew licenses of qualified applicants. The board shall conduct hearings on charges that may call for discipline of a licensee, revocation of a license, or removal of schools of nursing from the approved list. It shall cause the prosecution of persons violating this chapter and may incur necessary expenses for prosecutions.

(3) The board may adopt and the department shall publish forms for use by applicants and others, including license, certificate, and identity forms and other appropriate forms and publications convenient for the proper administration of this chapter. The board may fix reasonable fees for incidental services, within the subject matter delegated by this chapter.

(4) The board may participate in and pay fees to a national organization of state boards of nursing to ensure interstate endorsement of licenses.

(5) (a) The board may define the educational requirements and other qualifications applicable to recognition of advanced practice registered nurses. Advanced practice registered nurses are nurses who must have additional professional education beyond the basic nursing degree required of a registered nurse. Additional education must be obtained in courses offered in a university setting or its equivalent. The applicant must be certified or in the process of being certified by a certifying body for advanced practice registered nurses. Advanced practice registered nurses include nurse practitioners, nurse-midwives, nurse-anesthetists, and clinical nurse specialists.

(b) ~~The board of nursing and the board of medical examiners, acting jointly,~~ shall adopt rules regarding authorization for prescriptive authority of nurse specialists. If considered appropriate for a nurse specialist who applies to the board for authorization, prescriptive authority must be granted.

(6) The board shall establish a program to assist licensed nurses who are found to be physically or mentally impaired by habitual intemperance or the excessive use of narcotic drugs, alcohol, or any other drug or substance. The program must provide assistance to licensees in seeking treatment for substance abuse and monitor their efforts toward rehabilitation. For purposes of funding this program, the board shall adjust the license fee provided for in 37-8-431 commensurate with the cost of the program.

(7) The board may adopt rules for delegation of nursing tasks by licensed nurses to unlicensed persons.

(8) The board may fund additional staff, hired by the department, to administer the provisions of this chapter."

Section 14. Section 37-8-204, MCA, is amended to read:

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"37-8-204. Executive director -- qualifications. ~~(1)~~ The department shall hire an executive director to provide services to the board in connection with the board's duties of:

~~(a)(1)~~ prescribing curricula and standards for nursing schools and making surveys of and approving schools and courses;

~~(b)(2)~~ evaluating and approving courses for affiliation of student nurses; and

~~(c)(3)~~ reviewing qualifications of applicants for licensure.

~~(2) The executive director must be:~~

~~—— (a) a citizen of the United States;~~

~~—— (b) a graduate of an approved school of nursing;~~

~~—— (c) a holder of at least a master's degree with postgraduate courses in nursing;~~

~~—— (d) a registered professional nurse with at least 5 years' experience in teaching or administration in an approved school of nursing."~~

Section 15. Section 37-8-431, MCA, is amended to read:

"37-8-431. Renewal of license. (1) The license of a person licensed under this chapter must be renewed on the date set by department rule. At least 30 days prior to the renewal date, the department shall mail an application form for renewal of a license to each person to whom a license was issued or renewed ~~during the year~~. The applicant shall carefully complete and ~~subscribe~~ sign the application form and return it to the department with a renewal fee prescribed by the board on or before the renewal date.

(2) The board may increase or decrease the license fee so as to maintain in the state special revenue fund at all times an adequate amount to be used for the purpose of administering, policing, and enforcing the provisions of Title 37, chapter 1, and this chapter. On receipt of the application and fee, the department shall verify the accuracy of the application against its record and from other sources the board considers reliable and issue to the applicant a certificate of renewal. The certificate of renewal renders the holder a legal practitioner of nursing for the period stated in the certificate of renewal.

(3) A licensee who allows the license to lapse by failing to renew the license may be reinstated by the board on satisfactory explanation for the failure to renew the license and on payment of the current renewal fee prescribed by the board.

(4) A person practicing nursing during the time following the date the license has expired is an illegal practitioner and is subject to the penalties provided for violations of this chapter.

(5) The board may establish a reasonable late fee for licensees who fail to renew their license by

the renewal date."

Section 16. Section 37-12-201, MCA, is amended to read:

"37-12-201. Organization of board -- meetings -- powers and duties. (1) The board shall elect annually a president, vice president, and secretary-treasurer from its membership.

(2) The board shall hold a regular meeting each year at Helena and shall hold special meetings at times and places as a majority of the board designates. ~~A majority of the board constitutes a quorum.~~

(3) The board shall:

(a) administer oaths, take affidavits, summon witnesses, and take testimony as to matters coming within the scope of the board;

(b) adopt a seal that must be affixed to licenses issued;

(c) make a schedule of minimum educational requirements, which are without prejudice, partiality, or discrimination, as to the different schools of chiropractic;

(d) adopt rules necessary for the implementation, administration, continuation, and enforcement of this chapter. The rules must address but are not limited to license applications, form and display of license, license examination format, criteria for and grading of examinations, disciplinary standards for licensees, and the registration of interns and preceptors.

(e) make determinations of the qualifications of applicants under this chapter;

(f) administer the examination for licensure under this chapter;

(g) establish and collect fees, fines, and charges as provided in this chapter;

(h) issue, suspend, or revoke licenses under the conditions prescribed in this chapter; and

(i) certify that a chiropractor who meets the standards that the board by rule adopts is a qualified evaluator for purposes of 39-71-711.

(4) The department shall keep a record of the proceedings of the board, which must at all times be open to public inspection."

Section 17. Section 37-14-201, MCA, is amended to read:

"37-14-201. Compensation of board members -- meetings -- ~~quorum~~. (1) Board members ~~shall~~ must receive compensation and travel expenses, as provided for in 37-1-133.

(2) The board shall meet at least twice a year and elect a ~~chairman~~ presiding officer at the first meeting of each calendar year.

~~(3) Four members of the board constitute a quorum for the purpose of transacting business."~~

Section 18. Section 37-15-201, MCA, is amended to read:

"37-15-201. Meetings. (1) The board shall meet at least once a year at a place, day, and hour determined by the board. The board shall also meet at other times and places as the bylaws of the board may provide or by call of the chairman presiding officer or a majority of the members of the board. ~~A quorum of the board shall consist of the majority of its members, but in no instance may a~~ A meeting of three board members who are exclusively speech-language pathologists or exclusively audiologists may not be considered a quorum.

(2) All meetings of the board for the consideration of and action on matters coming before the board are open to the public except:

(a) when matters involving the management of internal affairs of the board may be considered and acted upon by the board in executive meetings under rules prescribed by the board;

(b) sessions to prepare, approve, grade, or administer examinations;

(c) upon request of a person who has failed the licensing examinations and who is appearing to appeal the failure."

Section 19. Section 37-16-201, MCA, is amended to read:

"37-16-201. Meetings -- ~~quorum~~ -- organization. (1) The board shall meet at least once each year at a place and time determined by the chairman presiding officer and at other times and places specified by the chairman presiding officer to carry out ~~this~~ the provisions of this chapter. ~~Three members constitute a quorum.~~

(2) Members of the board shall annually designate one member to serve as chairman presiding officer and another member to serve as secretary-treasurer."

Section 20. Section 37-16-303, MCA, is amended to read:

"37-16-303. Bill of sale -- medical evaluation requirements -- waiver. (1) Any person who practices the selling, fitting, or dispensing of hearing aids and related devices shall, upon the sale of a hearing aid or related device, deliver to the customer a bill of sale that must contain:

(a) the seller's signature and license number and the name and address of the seller's permanent place of business;

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(b) a description of the make and type of the hearing aid or related device furnished and the amount charged;

(c) any warranty or guaranty and the right to cancel, and the terms of the warranty or guaranty and the right to cancel;

(d) the condition of the hearing aid or related device and whether it is new, used, or reconditioned;

(e) a provision that maintenance service for the hearing aid or related device is available; and

(f) the following statement, in boldface, 12-point type: "If you have any questions regarding your consumer rights with respect to hearing aids and related devices, contact the state Board of Hearing Aid Dispensers." The statement must also list the current telephone number and address of the board's office.

(2) (a) Except as provided in subsection (2)(b), a hearing aid dispenser may not sell a hearing aid to a person unless the person has presented to the hearing aid dispenser a written statement signed by a licensed physician within the previous 6 months that states that the person's hearing loss has been medically evaluated and that ~~the person may benefit from a hearing aid~~ there are no contraindications for hearing aid use.

(b) If the prospective hearing aid purchaser is 18 years of age or older, the hearing aid dispenser may give that person the opportunity to waive the requirements of subsection (2)(a) in accordance with the disclosure, waiver form, and instructional brochure requirements of the U.S. food and drug administration regulations found at 42 CFR 801.420 and 42 CFR 801.421."

Section 21. Section 37-17-201, MCA, is amended to read:

"37-17-201. Meetings -- expenses of members -- attorney general as board attorney -- seal. (1)

The board shall hold a regular annual meeting in which it shall select from its members a chairman presiding officer and a secretary. Other regular meetings ~~shall~~ must be held at ~~such the times as that~~ the rules of the board provide. Special meetings may be held at times considered necessary or advisable by the ~~chairman~~ presiding officer and the majority of its members or on the request of the governor. Reasonable notice of meetings ~~shall~~ must be given in the manner prescribed by the board. ~~The quorum of the board consists of the majority of its members.~~ The department shall keep a record of the board's proceedings.

(2) Each board member ~~shall~~ must receive compensation and travel expenses as provided for in 37-1-133.

(3) The attorney general shall act as attorney for the board. ~~He or his~~ The attorney general or a representative of the attorney general may sit as an ex officio member of the board in an advisory capacity

only.

(4) The board shall adopt an official seal."

Section 22. Section 37-17-306, MCA, is amended to read:

"37-17-306. Renewal. (1) The license expires on the date set by department rule. The department shall notify each person licensed under this chapter relative to the date of the expiration and the amount of the renewal fee. This notice must be mailed to each licensed psychologist at the licensee's listed address at least 1 month before the expiration of the license.

(2) Renewal may be made by application during the 60 days prior to the expiration date. Failure on the part of a person licensed to pay the renewal fee by the expiration date does not deprive the person of the right to renew, ~~but the fee must be increased 10% for each month or major portion of a month that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal may not exceed twice the normal renewal fee~~ However, a late fee must be assessed in accordance with board rule. Application for renewal following a lapse of 1 year or more will be subject to review by the board, and the applicant may be requested to successfully complete an examination ~~successfully~~ if the board so determines."

Section 23. Section 37-18-201, MCA, is amended to read:

"37-18-201. Organization -- meetings. (1) A board member ~~shall~~ must receive a certificate of appointment from the governor.

(2) The board shall annually elect from its members a president, ~~vice-president~~ vice president, and secretary-treasurer and shall hold at least two regular meetings each year. ~~At a meeting four members of the board constitute a quorum. If a member of the board, without cause, absents himself from two of its regular meetings consecutively, his office is vacant~~ is absent from two consecutive regular meetings, that member's position on the board is vacated."

Section 24. Section 37-19-202, MCA, is amended to read:

"37-19-202. Meetings -- quorum -- rulemaking power. The board shall hold ~~such~~ meetings as may be necessary. ~~Three members constitute a quorum for the transaction of business.~~ The board may adopt and enforce rules to carry out the purposes of this chapter."

Section 25. Section 37-24-201, MCA, is amended to read:

"37-24-201. Organization -- general rulemaking power -- quorum. (1) The board of occupational therapy practice shall meet annually and elect a ~~chairman~~ presiding officer and a secretary from its members. The board shall hold other meetings when necessary to transact its business.

(2) The board may adopt rules for the conduct of its affairs and the administration of this chapter. Rules adopted by the board may include ~~such rules as~~ that are reasonable or necessary for the proper performance of its duties and the regulation of proceedings before it.

~~(3) Three board members constitute a quorum for the transaction of business."~~

Section 26. Section 37-26-202, MCA, is amended to read:

"37-26-202. Board meetings. (1) The board shall meet at least once annually.

(2) Special meetings may be called by any two board members or the presiding officer.

~~(3) A majority of the board constitutes a quorum for the transaction of business."~~

Section 27. Section 37-28-103, MCA, is amended to read:

"37-28-103. Board meetings -- procedure -- seal. (1) (a) The board shall meet at least once a year and shall elect annually a ~~president~~, vice ~~president~~, presiding officer and secretary-treasurer from its membership. The board may convene at the request of the ~~president~~ presiding officer or at other times the board determines necessary to transact its business.

(b) The governor shall designate the presiding officer of the board.

(2) The board shall adopt a seal by which the board may authenticate its documents."

Section 28. Section 37-30-101, MCA, is amended to read:

"37-30-101. Definitions -- practice of barbering. (1) Unless the context requires otherwise, as used in this chapter the following definitions apply:

(a) "Barbershop" means a place where a person carries on, engages in, practices, or causes to be carried on, engaged in, or practiced the business of barbering.

(b) "Board" means the board of barbers provided for in 2-15-1856.

(c) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(2) Any one or any combination of the following practices, when done upon the human body for tonsorial purposes and not for the treatment of disease or physical or mental ailments and when done for

payment, either directly or indirectly, constitutes the practice of barbering:

- (a) shaving or trimming the beard;
 - (b) cutting, styling, coloring, or waving the hair;
 - (c) straightening of the hair by using chemicals;
 - (d) giving facial or scalp massage or treatment with oils, creams, lotions, or other preparations, either by hand or mechanical appliances;
 - (e) ~~singeing or~~ shampooing the hair or applying hair tonic or bleaching or highlighting the hair of ~~male persons~~;
 - (f) applying cosmetic preparations, antiseptics, powders, oils, lotions, or gels to the scalp, face, hands, or neck.
- (3) The practice of cosmetology by a licensed cosmetologist, including cutting the hair of any person, does not constitute the practice of barbering."

Section 29. Section 37-47-202, MCA, is amended to read:

"37-47-202. Executive director -- ~~qualifications~~ -- powers and duties. (1) The department may hire an executive director to assist the board in carrying out its duties under this chapter.

~~(2) The executive director must:~~

- ~~(a) be a citizen of the United States and a resident of Montana;~~
- ~~(b) have knowledge of outfitting and guiding; and~~
- ~~(c) have at least 2 years' experience in management or equivalent training or education.~~

~~(3)~~(2) The duties of the executive director include:

- (a) processing and investigating applications for licensure as an outfitter or guide;
- (b) conducting investigations of outfitters and guides that involve violations of this chapter or rules of the board and reporting to the board regarding complaints and investigations of complaints;
- (c) coordinating inspections, investigations, and training activities of investigators under this chapter; and
- (d) coordinating investigations with other local, state, and federal agencies."

Section 30. Section 37-50-201, MCA, is amended to read:

"37-50-201. Organization -- general rulemaking power -- ~~quorum~~ -- seal -- records. (1) The board shall elect annually a ~~chairman~~ presiding officer and a secretary from its members.

(2) The board may adopt rules for the conduct of its affairs and the administration of this chapter.

~~(3) A quorum for the transaction of business consists of three members of the board.~~

~~(4)~~(3) The board ~~shall~~ must have a seal ~~which shall~~ that must be judicially noticed.

~~(5)~~(4) The department shall keep records of the board's proceedings. In a proceeding in court, civil or criminal, arising out of or founded on this chapter, copies of these records certified as correct under the seal of the board are admissible in evidence as tending to prove the content of these records."

Section 31. Section 37-51-102, MCA, is amended to read:

"37-51-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Account" means the real estate recovery account established in 37-51-501.

(2) (a) "Adverse material fact" means a fact that should be recognized by a broker or salesperson as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that:

(i) materially affects the value, affects structural integrity, or presents a documented health risk to occupants of the property; or

(ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.

(b) The term does not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony.

(3) "Board" means the board of realty regulation provided for in 2-15-1867.

(4) "Broker" includes an individual who:

(a) for another or for valuable consideration or who with the intent or expectation of receiving valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

(b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition of real estate for consideration;

(c) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers;

(d) makes the advertising, sale, lease, or other real estate information available by public display to potential buyers and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(f) receives a fee, commission, or other compensation for referring to a licensed broker or salesperson the name of a prospective buyer or seller of real property; or

(g) advertises or represents to the public that the individual is engaged in any of the activities referred to in subsections (4)(a) through (4)(f).

~~(5) "Broker associate" means a broker who associates, as an employee or independent contractor, with a broker owner and does not own an interest in a real estate firm.~~

~~—— (6) "Broker owner" means a broker who owns or has a financial interest in a real estate firm.~~

~~(7)~~(5) "Buyer" means a person who is interested in acquiring an ownership interest in real property or who has entered into an agreement to acquire an interest in real property. The term includes tenants or potential tenants with respect to leases or rental agreements of real property.

~~(8)~~(6) "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker agreement, is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent and an in-house buyer agent designate.

~~(9)~~(7) "Buyer broker agreement" means a written agreement in which a prospective buyer employs a broker to locate real estate of the type and with terms and conditions as designated in the written agreement.

~~(10)~~(8) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a buyer.

~~(11)~~(9) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

~~(12)~~(10) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or buyer broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with written authorization, as provided in 37-51-314. An in-house buyer or seller agent designate may not be considered a dual agent.

~~(13)~~(11) "Franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in

substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

~~(14)~~(12) "In-house buyer agent designate" means a broker ~~associate~~ or salesperson employed by or associated as an independent contractor with a broker ~~owner~~ and designated by the broker ~~owner~~ as the exclusive agent for a buyer for a designated transaction and who may not be considered to be acting for other than the buyer with respect to the designated transaction.

~~(15)~~(13) "In-house seller agent designate" means a broker ~~associate~~ or salesperson employed by or associated as an independent contractor with a broker ~~owner~~ and designated by the broker ~~owner~~ as the exclusive agent for a seller for a designated transaction and who may not be considered to be acting for other than the seller with respect to the designated transaction.

~~(16)~~(14) "Listing agreement" means a written agreement between a seller and broker for the sale of real estate, with the terms and conditions set out in the agreement.

~~(17)~~(15) "Negotiations" means:

- (a) efforts to act as an intermediary between parties to a real estate transaction;
- (b) facilitating and participating in contract discussions;
- (c) completing forms for offers, counteroffers, addendums, and other writings; and
- (d) presenting offers and counteroffers.

~~(18)~~(16) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

~~(19)~~(17) "Property manager" includes a person who for a salary, commission, or compensation of any kind engages in the business of leasing, renting, subleasing, or other transfer of possession of real estate belonging to others without transfer of the title to the property, pursuant to 37-51-601 and 37-51-602.

~~(20)~~(18) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

~~(21)~~(19) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale, exchange, or lease of an interest in real estate and includes all communication, interposition,

advisement, negotiation, and contract development and closing.

~~(22)~~(20) "Salesperson" includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

~~(23)~~(21) "Seller" means a person who has entered into a listing agreement to sell real estate and includes landlords who have an interest in or are a party to a lease or rental agreement.

~~(24)~~(22) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

~~(25)~~(23) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a seller.

~~(26)~~(24) (a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real estate transaction without acting as an agent or representative of any party to the real estate transaction.

(b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or has disclosed, as required in this chapter, a relationship other than that of a statutory broker."

Section 32. Section 37-51-209, MCA, is amended to read:

"37-51-209. Executive secretary -- hiring; and duties, ~~and qualifications.~~ ~~(1)~~ The department of commerce may hire an executive secretary to carry out duties prescribed by the board pursuant to the board's responsibilities and duties established by law.

~~(2) The person hired to be executive secretary:~~

~~—— (a) shall possess at least a bachelor's degree from an accredited college or university;~~

~~—— (b) may not be an officer or paid employee of a real estate association or group of real estate dealers or brokers;~~

~~—— (c) must be a citizen of the United States of America; and~~

~~—— (d) must be of good moral character."~~

Section 33. Section 37-51-302, MCA, is amended to read:

"37-51-302. Broker or salesperson license -- qualifications of applicant. (1) Licenses may be granted only to individuals considered by the board to be of good repute and competent to transact the

business of a broker or salesperson in a manner as to safeguard the interests of the public.

(2) An applicant for a broker's license ~~shall~~:

- (a) must be at least 18 years of age;
- (b) must have graduated from an accredited high school or completed an equivalent education as determined by the board;
- (c) must have been actively engaged as a licensed real estate salesperson for a period of 2 years or have had experience or special education equivalent to that which a licensed real estate salesperson ordinarily would receive during this 2-year period as determined by the board, except that if the board finds that an applicant could not obtain employment as a licensed real estate salesperson because of conditions existing in the area where ~~he~~ the applicant resides, the board may waive this experience requirement;
- (d) shall file an application for a license with the department; and
- (e) shall furnish written evidence that ~~he~~ the applicant has completed 60 classroom or equivalent hours, ~~in addition to those required to secure a salesperson's license~~, in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law, real estate finance, and related topics.

(3) The board shall require information it considers necessary from an applicant to determine ~~his~~ honesty, trustworthiness, and competency.

(4) (a) An applicant for a salesperson's license ~~shall~~:

- (i) must be at least 18 years of age;
- (ii) must have received credit for completion of 2 years of full curriculum study at an accredited high school or completed an equivalent education as determined by the board;
- (iii) shall file an application for a license with the department; and
- (iv) shall furnish written evidence that ~~he~~ the applicant has completed 60 classroom or equivalent hours in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law and ethics, real estate finance, and related topics.

(b) ~~His~~ The application ~~shall~~ must be accompanied by the recommendation of the licensed broker by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested

license remains in effect.

(5) The department shall issue to each licensed broker and to each licensed salesperson a license and a pocket card in a form and size ~~as~~ that the board prescribes.

~~(6) A broker's license must indicate whether the broker is a broker owner or a broker associate."~~

Section 34. Section 37-51-309, MCA, is amended to read:

"37-51-309. Broker owner -- broker associate -- salesperson -- notice to department of change of association. (1) A salesperson may not be associated with or under contract to more than one licensed broker ~~owner, nor may he~~ or perform services for a broker other than the one designated on the license issued to the salesperson.

(2) When a licensed salesperson desires to change ~~his~~ association or contractual relationship from one licensed broker to another, ~~he~~ the salesperson shall notify the department promptly in writing of these facts, pay the required fee, and return ~~his~~ the salesperson's license ~~and pocket card~~, and a new license and pocket card ~~shall~~ must be issued. ~~No~~ A salesperson ~~shall~~ may not directly or indirectly work for or with a broker ~~owner~~ until ~~he~~ the salesperson has been issued a license to work for or with that broker ~~owner~~. On termination of a salesperson's association or contractual relationship, ~~he~~ the salesperson shall surrender ~~his~~ the salesperson's license ~~and pocket card~~ to ~~his~~ the salesperson's broker, ~~owner~~ who shall return ~~them~~ it to the department for cancellation.

(3) Only one license ~~shall~~ may be issued to a salesperson to be in effect at one time.

~~(4) A broker associate may not be associated with more than one broker owner."~~

Section 35. Section 37-51-315, MCA, is amended to read:

"37-51-315. Vicarious liability. (1) A party to a real estate transaction is not liable for a misrepresentation made by the party's agent or subagent unless:

(a) the party has actual knowledge of the misrepresentation; or

(b) the agent or subagent is repeating a misrepresentation made by the party.

(2) A broker is not liable for a misrepresentation made by the broker's ~~broker associate~~ or subagent unless:

(a) the broker has actual knowledge of the misrepresentation;

(b) ~~a broker associate~~ the subagent making the misrepresentation is an employee of the broker and not an independent contractor ~~or subagent~~; or

(c) a broker ~~associate~~ or subagent is repeating a misrepresentation made by the broker.

(3) An agent is not liable for a misrepresentation made by the principal unless the agent has actual knowledge of the misrepresentation."

NEW SECTION. **Section 36. Temporary registration of certification and licensure of out-of-state appraisers.** (1) The board shall recognize on a temporary basis the certificate or license of an appraiser issued by another state if:

- (a) the appraiser's business in this state is of a temporary nature; and
- (b) the appraiser registers with the board.

(2) The out-of-state appraiser shall submit an application for temporary registration on a form prescribed by the board and pay the required fee. In addition, a letter of good standing or license history indicating that the applicant is currently in good standing must be submitted directly to the board's office from the applicant's state of certification or licensure, or the board may obtain a national registry appraiser license history report.

(3) The temporary registration is valid only for a single appraisal assignment within this state. The temporary registration may be awarded for a 6-month period and renewed one time within the 12-month period following the original date on which the temporary registration was issued.

(4) A single appraisal assignment may include one or more properties under a single contract with a single client.

Section 37. Section 37-60-201, MCA, is amended to read:

"37-60-201. Organization -- meetings -- records. The board shall meet annually and shall elect from among the seven members a president and a secretary. The board shall hold other meetings when necessary to transact its business. ~~A majority of the board constitutes a quorum at any meeting.~~ The department shall keep complete minutes and records of the meetings and rules and orders promulgated by the board. Copies of records and papers kept by the department, certified by the ~~chairman~~ president and authenticated by the seal of the board, ~~shall~~ must be received in evidence in courts with like effect as the original. Records of the board are open to public inspection under rules it prescribes."

Section 38. Section 37-65-201, MCA, is amended to read:

"37-65-201. Organization -- meetings -- records. (1) The board ~~must~~ shall, ~~during the first week~~

~~in April of each year on an annual basis, elect from among its number a president, secretary, and treasurer and must have a seal vice president, and secretary-treasurer.~~

~~(2) The president and secretary may administer oaths in the examination of applications for certificates and to witnesses called before the board for the transaction of business under this chapter.~~

~~———— (3) The board shall meet at places the board determines during the first week of April of each year and at other times.~~

~~(4)~~(2) The department ~~must~~ shall keep a record of proceedings of the board.

~~(5)~~(3) The department ~~must~~ shall keep a register of applicants for a certificate, with the name of the applicant ~~and age of applicants, the number of years spent in the study of architecture,~~ and whether the applicant was granted a certificate or rejected. The register is prima facie evidence of the matters contained in it."

Section 39. Section 37-65-303, MCA, is amended to read:

"37-65-303. Application -- examination -- issuance of license. (1) A person wishing to practice architecture in this state shall apply to the department for a license ~~to do so~~. A person applying ~~shall~~ must have successfully completed the requirement of prerequisites in education; and practical experience; and a written examination as prescribed by the board. The examination must be in substantial conformance with the standard national council of architectural registration boards examination and grading procedure, except as modified by board rules.

(2) After examination, the department shall, if the candidate has been found qualified, grant a license to the candidate to practice architecture in this state, which may ~~only~~ be granted only on the consent of not less than two members of the board; ~~attested by the secretary, and have the seal of the board attached.~~"

Section 40. Section 37-65-304, MCA, is amended to read:

"37-65-304. Examination fee -- deposit of fee. (1) Applicants for examination shall pay ~~in advance to the department a fee set by the board, commensurate with the cost, which shall defray the entire examination expense of the candidate. An applicant failing to pass the examination is entitled to reexamination at the next scheduled examination on payment of a reasonable fee prescribed~~ a fee established by an examination entity and approved by the board.

(2) The money received from the applicant ~~shall~~ must be deposited in the state special revenue

fund for the use of the board, subject to 37-1-101(6)."

Section 41. Section 37-65-308, MCA, is amended to read:

"37-65-308. Seal of architect. Every licensed architect ~~shall~~ must have a seal, ~~the impression of which that~~ must contain the name of the architect, ~~his or her~~ the city and state of the architect's place of business, the architect's license number, and the words "Licensed Architect, State of Montana", ~~with which he or she shall stamp all drawings and specifications issued from his or her office for use in this state."~~

NEW SECTION. Section 42. License verification. Notification to the board by a board-approved entity that the entity has received verification from a state or jurisdiction in which a person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct must be considered verification in compliance with 37-1-304(2).

Section 43. Section 37-66-301, MCA, is amended to read:

"37-66-301. License required. In order to safeguard human health and property and to promote the public welfare, ~~any~~ a person in either a public or private capacity practicing or offering to practice landscape architecture ~~for hire shall be~~ is required to submit evidence that ~~he~~ the person is qualified to ~~so~~ practice and ~~shall~~ is licensed be registered under the provisions of this chapter."

Section 44. Section 37-66-304, MCA, is amended to read:

"37-66-304. Qualifications ~~not required~~ and application for licensure. (1) A person wishing to practice landscape architecture in this state shall apply to the department for a license.

(2) ~~Each applicant must be admitted to the examination without prerequisite qualifications for licensure must have successfully completed the educational, practical experience, and written examination requirements established by the board."~~

Section 45. Section 37-67-101, MCA, is amended to read:

"37-67-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of professional engineers and professional land surveyors provided for in 2-15-1873.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Engineer intern" means a person who complies with the requirements for education, experience, and character and has passed an examination in the fundamental engineering subjects, as provided in this chapter.

(4) "Engineering survey" means all survey activities required to support the sound conception, planning, design, construction, maintenance, operation, and association of engineering projects, but excludes the surveying of real property for the establishment of land boundaries, rights-of-way, easements, and the dependent or independent surveys or resurveys of the public land survey system.

~~(4)~~(5) "Land surveyor intern" means a person who has qualified for, taken, and passed an examination on the basic disciplines of land surveying, as provided in this chapter.

~~(5)~~(6) (a) "Practice of engineering" means:

(i) any service or creative work the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to the services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, planning the use of water, teaching of advanced engineering subjects, engineering surveys, and the inspection of construction for the purpose of ensuring compliance with drawings and specifications;

(ii) any of the functions described in subsection ~~(5)(a)(i)~~ (6)(a)(i) that embrace the services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of mechanical, electrical, hydraulic, pneumatic, or thermal nature insofar as they involve safeguarding life, health, or property.

(b) The term includes other professional services necessary to the planning, progress, and completion of any engineering services.

(c) The term does not include the work ordinarily performed by persons who operate or maintain machinery or equipment, communication lines, signal circuits, electric powerlines, or pipelines.

~~(6)~~(7) "Practice of land surveying" means any service or work, the performance of which requires the application of special knowledge of the principles of mathematics, physical sciences, applied sciences, and:

(a) the principles of property boundary law to the recovery and preservation of evidence pertaining to earlier land surveys;

- (b) teaching of land surveying subjects;
- (c) measurement and allocation of lines, angles, elevations, and coordinate systems;
- (d) location of natural and constructed features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water, including work for the determination of areas and volumes;
- (e) monumenting of property boundaries;
- (f) platting and layout of lands and the subdivisions of land, including the alignment and grades of streets and roads in subdivisions; ~~and~~
- (g) preparation and perpetuation of maps, plats, field note records, and property descriptions; and
- (h) locating, relocating, establishing, reestablishing, laying out, or retracing of any property line or boundary of any tract of land or road, right-of-way, easement, right-of-way easement, alignment, or elevation of any of the fixed works embraced within the practice of engineering.

~~{7}(8)~~ "Professional engineer" means a person who, by reason of special knowledge and use of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and engineering experience, is qualified to practice engineering and who has been ~~registered and~~ licensed as a professional engineer by the board.

~~{8}(9)~~ "Professional land surveyor" means a person who:

- (a) has been ~~registered and~~ licensed as a land surveyor by the board;
- (b) is a professional specialist in the technique, analysis, and application of measuring land;
- (c) is skilled and educated in the principles of mathematically related physical and applied sciences, relevant requirements of law for adequate evidence, and all requisites to the surveying of real property; and
- (d) is engaged in the practice of land surveying ~~as defined in this section.~~

~~{9}(10)~~ "Responsible charge" means direct charge and control and personal supervision either of engineering work or of land surveying. Only a professional engineer or a professional land surveyor may legally assume responsible charge under this chapter."

Section 46. Section 37-67-102, MCA, is amended to read:

"37-67-102. Representation as practitioner to be ~~construed~~ considered as practice. (1) A person ~~shall must~~ be construed considered to practice or offer to practice engineering, within the meaning and intent of this chapter, who:

- (a) practices any branch of the profession of engineering; ~~or who~~

(b) ~~by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be that the person is~~ a professional engineer or through the use of some other title implies that ~~he the~~ person is a professional engineer or ~~that he is registered licensed~~ under this chapter; or

(c) ~~who holds himself out represents that the person as is~~ able to perform or ~~who~~ does perform any engineering service or work or any other service designated by the practitioner ~~which that~~ is recognized as engineering.

(2) ~~Any~~ A person ~~shall must~~ be ~~construed considered~~ to practice or offer to practice land surveying, within the meaning and intent of this chapter, who:

(a) engages in land surveying; ~~or who~~

(b) ~~by verbal claim, sign, letterhead, card, or in any other way represents himself to be that the~~ person is a professional land surveyor or through the use of some other title implies that ~~he the person~~ is a professional land surveyor; or

(c) ~~who represents himself as that the person is~~ able to perform or ~~who~~ does perform any land surveying service or work or any other service designated by the practitioner ~~which that~~ is recognized as land surveying."

Section 47. Section 37-67-103, MCA, is amended to read:

"37-67-103. Exemptions. The following are exempt from coverage under this chapter:

- (1) the practice of any other legally recognized professions or trades;
- (2) the mere execution of work by a contractor, as distinguished from its planning or design or the supervision of the construction of work as a ~~foreman~~ lead supervisor or superintendent;
- (3) the work of an employee or a subordinate of a person holding a ~~certificate of registration license~~ under this chapter or an employee of a person practicing lawfully under this chapter, ~~provided such~~ if the work does not include final engineering or land surveying designs or decisions and is done under the direct supervision of a person holding a ~~certificate of registration license~~ under this chapter or a person practicing lawfully under this chapter;
- (4) the practice of professional engineering by licensed architects ~~where~~ when the practice is purely incidental to their practice of architecture."

Section 48. Section 37-67-201, MCA, is amended to read:

"37-67-201. Organization -- meetings -- ~~quorum~~ -- seal. (1) The board shall hold at least two

regular meetings each year. Special meetings ~~shall~~ must be held at ~~such the time as that~~ the rules of the board ~~may~~ provide. Notice of all meetings ~~shall~~ must be given in ~~such the manner as that~~ the rules ~~may~~ provide.

(2) The board shall elect annually the following officers: a ~~chairman~~ presiding officer, a ~~vice-chairman~~ vice presiding officer, and a secretary.

~~(3) A quorum of the board shall consist of not less than five members.~~

~~(4)~~(3) The board shall adopt ~~and have~~ an official seal."

Section 49. Section 37-67-204, MCA, is amended to read:

"37-67-204. Record of proceedings -- register of applicants. (1) The department shall keep a record of its proceedings and a register of the board's proceedings.

(2) The department shall keep a register of applicants for ~~registration~~ licensure, which ~~shall~~ must show:

- (a) the name, age, and residence of each applicant;
- (b) the date of the application;
- (c) the place of business of the applicant;
- (d) ~~his~~ the applicant's educational and other qualifications;
- (e) the branch or branches of engineering in which the applicant qualified;
- (f) whether an examination was required;
- (g) whether the applicant was rejected;
- (h) whether a ~~certificate of registration~~ license was granted;
- (i) the date of the action of the board; and
- (j) other information considered necessary by the board.

(3) The records of the department are prima facie evidence of the proceedings of the board, and a transcript ~~thereof~~ of the proceedings, certified by the department, is admissible in evidence as if the original were produced."

Section 50. Section 37-67-301, MCA, is amended to read:

"37-67-301. License required to practice or offer to practice. In order to safeguard life, health, and property and to promote the public welfare, ~~any~~ a person in either a public or private capacity practicing or offering to practice engineering or land surveying ~~shall hereafter be~~ is required to submit evidence that

~~he the person~~ is qualified ~~so~~ to practice and ~~shall be registered~~ is licensed as ~~hereinafter~~ provided in this chapter. ~~From and after January 1, 1958, it shall be~~ It is unlawful for ~~any a~~ person to practice or to offer to practice in this state engineering or land surveying, ~~as defined in this chapter,~~ or to use in connection with ~~his the person's~~ name or otherwise assume, use, or advertise any title or description tending to convey the impression that ~~he the person~~ is a professional engineer or a professional land surveyor unless ~~such the person~~ has been ~~duly registered~~ licensed under the provisions of this chapter."

Section 51. Section 37-67-303, MCA, is amended to read:

"37-67-303. Application -- contents -- fees. (1) Applications for ~~registration~~ licensure must be on forms prescribed by the board and furnished by the department, must contain statements made under oath showing the applicant's education and a detailed summary of the applicant's technical work, and must contain the required references.

(2) The fee for an engineer intern is as prescribed by the board, must accompany the application, and must include the cost of one examination. ~~No~~ An additional fee is not required for the issuance of a certificate.

(3) The application fee for ~~registration~~ licensure as a professional engineer is as prescribed by the board for those holding an engineer intern certificate validated for Montana. For those holding a valid engineer intern certificate from some other state, the application fee is as prescribed by the board, which includes the cost of verification of engineer intern certification or licensure and one examination. Upon approval of an application for ~~registration~~ licensure as a professional engineer, an additional fee equal to the existing renewal fee must be paid before the issuance of a ~~certificate~~ license as a professional engineer.

(4) The department, subject to approval by the board, may, on approval of the application, payment of a fee as prescribed by the board, and payment of an additional fee equal to the appropriate renewal fee, issue a ~~certificate of registration~~ license as a professional engineer to a person who holds a certificate of qualification or ~~registration~~ licensure issued to the person by the committee on national engineering certification of the national council of examiners for engineering and surveying or by a state, territory, or possession of the United States or by another country if the applicant's qualifications meet the requirements of this chapter and the rules of the board.

(5) The fee for a land surveyor intern is as prescribed by the board, which must accompany the application and must include the cost of one examination. ~~No~~ An additional fee is not required for issuance of a certificate.

(6) The application fee for ~~registration licensure~~ as a professional land surveyor is as prescribed by the board for those holding a land surveyor intern certificate validated in Montana. For those holding a valid land surveyor intern certificate from some other state, the application fee is as prescribed by the board, which includes cost of verification of the certification. Upon approval of an application for ~~registration licensure~~ as a professional land surveyor, an additional fee equal to the existing renewal fee must be paid before the issuance of a ~~certificate license~~ as a professional land surveyor.

(7) The application fee for ~~registration licensure~~ as both a professional engineer and professional land surveyor is as prescribed by the board for those holding engineer intern and land surveyor intern certificates validated in Montana. For those holding valid engineer intern and land surveyor intern certificates from another jurisdiction, the application fee is as prescribed by the board. The fee must accompany the application. Upon approval of an application for ~~registration licensure~~ as a professional engineer and professional land surveyor, an additional fee equal to the existing renewal fee must be paid before the issuance of a ~~certificate license~~.

(8) If the board denies the issuance of a ~~certificate of registration license~~ to any applicant, the initial fee deposited must be retained as an application fee."

Section 52. Section 37-67-304, MCA, is amended to read:

"37-67-304. Local government not to impose fee or examination. A ~~registration or~~ license fee or examination may not be imposed by a local government on a person ~~registered~~ licensed under this chapter to practice engineering or land surveying."

Section 53. Section 37-67-305, MCA, is amended to read:

"37-67-305. General qualifications of applicants for ~~registration licensure~~ as professional engineer or certification as engineer intern. To be eligible for admission to an examination for professional engineer or engineer intern, an applicant must be of good character and reputation. The applicant ~~must~~ shall submit five references with the application for ~~registration licensure~~ as a professional engineer. Three references must be from professional engineers with personal knowledge of the applicant's engineering experience. In the case of an application for certification as an engineer intern, the applicant shall submit three character references."

Section 54. Section 37-67-306, MCA, is amended to read:

"37-67-306. Qualifications of applicant for ~~registration~~ licensure as professional engineer. The following is considered minimum evidence satisfactory to the board that the applicant is qualified for ~~registration~~ licensure as a professional engineer:

(1) A graduate of an engineering or engineering technology curriculum of 4 years or more approved by the board as being of satisfactory standing, with a specific record of an additional 4 years or more of progressive experience on engineering projects under the direct supervision of a professional engineer, unless exempt under 37-67-320(2), and who has passed examinations of a grade and character that indicate to the board that the applicant may be competent to practice engineering, must be admitted to an 8-hour written examination in the fundamentals of engineering and an 8-hour written examination in the principles and practices of engineering. Upon passing the examinations, the applicant must be granted a ~~certificate of registration~~ license to practice engineering in this state if the applicant is otherwise qualified.

(2) A graduate of a related science curriculum of 4 years or more, other than engineering or engineering technology, with a specific record of 8 years or more of progressive experience on engineering projects of a grade and character that indicate to the board that the applicant may be competent to practice engineering, may be admitted to an 8-hour written examination in the fundamentals of engineering and an 8-hour written examination in the principles and practices of engineering. Upon passing the examinations, the applicant must be granted a ~~certificate of registration~~ license to practice engineering in this state if the applicant is otherwise qualified.

(3) A graduate of an engineering or related science curriculum of 4 years or more, with a specific record of 20 years or more of progressive experience on engineering projects, of which at least 10 of those years ~~have~~ the applicant has been in charge of important engineering projects, of a grade and character that indicate to the board that the applicant may be competent to practice engineering, must be admitted to an 8-hour written examination in the principles and practices of engineering. Upon passing the examination, the applicant must be granted a ~~certificate of registration~~ license to practice engineering in this state if the applicant is otherwise qualified.

(4) Teaching engineering in a college or university offering an approved engineering curriculum of 4 years or more may be considered as engineering experience in these requirements if research, product development, or consulting has been a concurrent activity.

(5) A person who holds a doctorate degree in engineering from an institution with an engineering program approved by the board and the engineering accreditation commission of the accreditation board for engineering and technology or the Canadian engineering accreditation board and who provides a specific

record of at least 4 years of progressive experience on engineering projects of a grade and character that indicate to the board that the applicant may be competent to practice engineering must be admitted to an 8-hour written examination in the principles and practices of engineering. Upon passing the examination, the applicant must be issued a ~~certificate of registration~~ license to practice engineering in this state if the applicant is otherwise qualified."

Section 55. Section 37-67-308, MCA, is amended to read:

"37-67-308. General qualifications of applicants for ~~registration~~ licensure as professional land surveyor or certification as land surveyor intern. (1) To be eligible for admission to an examination for professional land surveyor or land surveyor intern, an applicant must be of good character and reputation. The applicant shall submit five references with the application for ~~registration~~ licensure as a professional land surveyor. Three of the references must be from professional land surveyors having personal knowledge of the applicant's land surveying experience. In the case of an application for certification as a land surveyor intern, the applicant shall submit three references, one of ~~whom~~ which must be from a professional land surveyor having personal knowledge of the applicant's land surveying experience.

(2) The evaluation of a land surveyor applicant's qualifications involves a consideration of the applicant's education, technical and land surveying experience, exhibits of land surveying projects ~~which~~ that the applicant has been in charge of, recommendations by references, and a ~~reviewing~~ review of these categories. The board may require an interview if it considers one necessary."

Section 56. Section 37-67-309, MCA, is amended to read:

"37-67-309. Qualifications of applicant for ~~registration~~ licensure as professional land surveyor. One of the following ~~shall~~ must be considered as minimum evidence to the board that the applicant is qualified for ~~registration~~ licensure as a professional land surveyor:

(1) ~~have~~ The applicant has a bachelor of science degree in a board-approved curriculum that ~~must contain~~ includes a minimum of 40 quarter credit hours in surveying techniques, principles, and practices; ~~and present; the applicant presents~~ evidence satisfactory to the board that, in addition ~~thereto, he the~~ applicant has had at least 4 years of combined office and field experience in land surveying, with a minimum of 3 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor; ~~and have~~ the applicant has passed the examinations ~~as~~ required by the board; ~~and~~

(2) ~~have~~ The applicant has 2 years of formal education in a board-approved curriculum above high school level, with at least 90 quarter credit hours that ~~must contain~~ include a minimum of 40 quarter credit hours in surveying techniques, principles, and practices, or equivalent semester hours passed, or the equivalent approved by the board, ~~and present;~~ the applicant presents evidence satisfactory to the board that, in addition ~~thereto, he~~ the applicant has had at least 6 years of combined office and field experience in land surveying satisfactory to the board, with a minimum of 4 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor; ~~and have~~ the applicant has passed the examinations ~~as~~ required by the board;

(3) ~~have~~ The applicant has a bachelor of science degree in a board-approved curriculum and ~~present~~ presents evidence satisfactory to the board that, in addition ~~thereto, he~~ the applicant has had at least 6 years of combined office and field experience in land surveying, with a minimum of 4 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor, and ~~have~~ the applicant has passed the examinations ~~as~~ required by the board; ~~or,~~

(4) ~~present~~ The applicant presents evidence satisfactory to the board that ~~he~~ the applicant has had at least 10 years of combined office and field experience in land surveying satisfactory to the board, with a minimum of 6 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor, and has passed the examinations ~~as~~ required by the board."

Section 57. Section 37-67-310, MCA, is amended to read:

"37-67-310. Qualifications of applicant for registration certification as land surveyor intern. To qualify for registration certification as a land surveyor intern, an applicant ~~must~~ shall present as evidence to the board at least one of the following:

(1) a bachelor of science degree in a board-approved curriculum that ~~must contain~~ includes a minimum of 27 semester or 40 quarter credit hours in surveying techniques, principles, and practices and evidence of having passed the written examinations required by the board;

(2) at least 2 years of formal education in an approved curriculum that ~~must contain~~ includes a minimum of 27 semester or 40 quarter credit hours in surveying techniques, principles, and practices, above high school level, with at least 60 semester or 90 quarter credit hours or equivalent semester hours passed, or the equivalent approved by the board, and evidence of having passed the written examinations required by the board;

(3) a bachelor of science degree in a board-approved curriculum and evidence satisfactory to the

board that, in addition, the applicant has had at least 2 years of combined office and field experience in land surveying, with a minimum of 1 year in charge of land surveying projects under the supervision of a professional land surveyor, and evidence of having passed the written examinations required by the board; or

(4) evidence satisfactory to the board that the applicant has had at least 6 years of combined office and field experience in land surveying, with a minimum of 4 years of experience in charge of land surveying projects, under the supervision of a professional land surveyor, and evidence of having passed the examinations required by the board."

Section 58. Section 37-67-311, MCA, is amended to read:

"37-67-311. Examinations. Examination requirements are as follows:

(1) The examinations must be held at times and places ~~as~~ that the board directs. The board shall determine the acceptable grade on examinations.

(2) Written examinations may be taken only after the applicant has met the other minimum requirements as ~~given~~ provided in 37-67-305 through 37-67-310 and has been approved by the board for admission to the examinations as follows:

(a) The examination on engineering fundamentals consists of an 8-hour examination ~~on the fundamentals of engineering~~. Passing the examination qualifies the examinee for an engineer intern certificate if the examinee has met all other requirements for certification required by this chapter.

(b) The examination on principles and practice of engineering consists of an 8-hour examination on applied engineering. Passing this examination qualifies the examinee for ~~registration~~ licensure as a professional engineer if the examinee has met the other requirements for ~~registration~~ licensure required by this chapter.

(c) The examinations for land surveyor intern consist of two 4-hour examinations, designated as parts I and II, on the basic disciplines of land surveying. Passing these examinations qualifies the examinee for a land surveyor intern certificate if the examinee has met all other requirements for ~~certificates~~ certification required by this chapter.

(d) The requirements and examinations for professional land surveyor consist of being a land surveyor intern, ~~of~~ two examinations, designated as parts III and IV, on the applied disciplines of land surveying, and ~~of~~ an examination specifically related to land surveying in Montana. Passing these examinations qualifies the examinee for ~~registration~~ licensure as a professional land surveyor if the

examinee has met the other requirements for ~~registration~~ licensure required by this chapter.

(3) A candidate failing one examination may apply for reexamination, which may be granted upon payment of a fee established by the board. Before readmission to the examination in the event of a second failure, the examinee ~~must~~ shall wait 1 year before a third examination.

(4) A candidate failing three examinations may not be allowed readmission to the examination. The candidate may apply for a special circumstance waiver from the board to be readmitted to the examination."

Section 59. Section 37-67-312, MCA, is amended to read:

"37-67-312. Licensure of professional engineers without examination by comity or endorsement.

(1) A person holding a certificate of registration to engage in the practice of engineering issued to the person by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or any foreign country, based on requirements that do not conflict with the provisions of this chapter and that were of a standard not lower than that specified in the applicable registration act in effect in this state at the time the certificate was issued, may upon application be ~~registered~~ licensed without further examination.

(2) A person holding a certificate of qualification issued by the committee on national engineering certification of the national council of examiners for engineering and surveying and whose qualifications meet the requirements of this chapter may upon application be ~~registered~~ licensed without further examination."

Section 60. Section 37-67-314, MCA, is amended to read:

"37-67-314. Issuance of ~~certificates~~ licenses -- seal of professional engineer or professional land surveyor -- enrollment card for interns. (1) The department shall issue to ~~any~~ an applicant who, in the opinion of the board, has met the requirements of this chapter a ~~certificate of registration~~ license giving the ~~registrant~~ licensee proper authority to engage in the practice of engineering or the practice of land surveying and to assume responsible charge of engineering or land surveying projects in this state. The ~~certificate of registration~~ license for a professional engineer must carry the designation "professional engineer" and for a professional land surveyor, "professional land surveyor". It must give the full name and serial number of the ~~registrant~~ licensee and must be signed by the presiding officer and the secretary under the seal of the board.

(2) ~~This certificate~~ A license is prima facie evidence that the named person is entitled to all rights, privileges, and responsibilities of a professional engineer or professional land surveyor while the ~~certificate of registration~~ license remains unrevoked or unexpired.

(3) Each ~~registrant~~ licensee may, upon ~~registration~~ licensure, obtain a seal of a design authorized by the board, bearing the ~~registrant's~~ licensee's name, serial number, and the legend "professional engineer" or "professional land surveyor". Plans, specifications, plats, drawings, reports, design information, and calculations prepared by a ~~registrant~~ licensee must ~~when issued~~ be signed with a written signature, dated, and stamped with the seal or a seal facsimile when issued. ~~It~~ After the expiration of a license, it is unlawful for a registrant the licensee whose license has lapsed to affix or permit the seal and signature or seal facsimile to be affixed to any:

- (a) plans, specifications, plats, drawings, reports, design information, or calculations; or
- (b) projects for which the licensee was not in responsible charge after the expiration of a certificate or for projects for which the registrant was not in responsible charge.

(4) The department shall issue to any applicant who, in the opinion of the board, has met the requirements of this chapter an enrollment card as an engineer intern or land surveyor intern. The enrollment card must indicate that the applicant's name and status has been recorded with the board. The enrollment card does not authorize the holder to practice as a professional engineer or professional land surveyor."

Section 61. Section 37-67-315, MCA, is amended to read:

"37-67-315. Biennial renewal -- fee -- statement of competency. (1) ~~Certificates of registration~~ Licenses expire every second year on the date established by rule of the department and become invalid on that date unless renewed. The department shall notify each person ~~registered~~ licensed under this chapter of the date of the expiration of the person's ~~certificate~~ license and the amount of the fee required for its renewal for 2 years. This notice must be mailed at least 1 month in advance of the date of the expiration of the ~~certificate~~ license. Renewal may be made prior to the expiration date by the payment of a fee as set by the board for either a professional engineer or a professional land surveyor. For renewal of a dual license as both a professional engineer and a professional land surveyor, the fee must be set by the board.

(2) A ~~certificate~~ license may not be renewed unless the registrant submits a statement to the effect and the board is satisfied that the ~~registrant~~ licensee has maintained competency by:

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- (a) the continued practice of engineering or land surveying; and
 - (b) engaging in other activities that provide for the maintenance of competency if prescribed by board rule, such as continuing education, which may require up to 15 professional development hours as prescribed by board rule and is generally patterned after the model rules of the national council of examiners for engineering and surveying.
- (3) Failure on the part of a ~~registrant~~ licensee to renew the ~~certificate~~ license biennially prior to the expiration date does not deprive the ~~registrant~~ licensee of the right of renewal; however, a ~~registrant~~ licensee who fails to pay the renewal fee for an additional year of the biennium is considered a new applicant and is required to submit a new application.
- (4) The fee for any ~~registrant~~ licensee who fails to renew the ~~certificate~~ license prior to the expiration date must be increased by an amount not to exceed 50% of the renewal fee. Renewal may not be completed until all fees are paid."

Section 62. Section 37-67-316, MCA, is amended to read:

"37-67-316. Replacement of lost or destroyed certificate or license. A new certificate of ~~registration~~ or license to replace a certificate or license revoked, lost, destroyed, or mutilated may be issued by the department, subject to the rules of the board."

Section 63. Section 37-67-318, MCA, is amended to read:

"37-67-318. Roster of licensees to be published by department. A roster showing the names and addresses of ~~registered~~ licensed professional engineers and ~~registered~~ licensed professional land surveyors ~~shall~~ must be published by the department. Copies ~~shall~~ must be placed on file with the secretary of state; and the clerk of each incorporated city and town; and in the office of each county clerk and recorder within the state and furnished to each person ~~registered~~ licensed and to the public, on request, at a fee established by the board."

Section 64. Section 37-67-320, MCA, is amended to read:

"37-67-320. Firms Sole proprietorships, firms, partnerships, and corporations -- requirements -- exceptions. (1) A sole proprietorship, firm, partnership, or corporation:

- (a) may engage in the practice of engineering in this state if the sole proprietor or any member of the firm, partnership, or corporation who is in responsible charge of engineering or land surveying work

performed in this state is a professional engineer or a professional land surveyor, as appropriate;

(b) must have a professional engineer or professional land surveyor in residence who is in responsible charge of the engineering or land surveying work conducted in the office or place of business if the sole proprietorship, firm, partnership, or corporation is engaged in the practice of engineering or the practice of land surveying; and

(c) shall obtain a certificate of authorization from the board before engaging in the practice of engineering or the practice of land surveying.

(2) The provisions of subsection (1) do not apply to sole proprietorships, firms, partnerships, or corporations that are engaged in the practice of engineering or the practice of land surveying for their own benefit and do not practice or offer engineering or land surveying services to others."

Section 65. Section 37-67-321, MCA, is amended to read:

"37-67-321. Emeritus status. (1) A registrant licensee who ~~has terminated his practice of~~ no longer practices engineering or land surveying may apply to the board for emeritus status.

(2) Upon receiving an application for emeritus status accompanied by the fee established by the board, the board shall issue a certificate license of emeritus status to the applicant and record the applicant's name in the roster as an emeritus registrant licensee, along with the date ~~he~~ on which the licensee received emeritus status.

(3) An emeritus registrant licensee may retain but may not use ~~his~~ the licensee's seal and may not practice engineering or land surveying.

(4) The board shall reissue a ~~certificate of registration license~~ certificate license to an emeritus registrant licensee who pays all application fees, meets all current requirements for registration licensure, and demonstrates to the board's satisfaction that for the 2 years preceding ~~his~~ the application for ~~registration~~ the licensee, ~~the applicant~~ the licensee has met the requirements for maintaining professional competence established under 37-67-315."

Section 66. Section 37-67-331, MCA, is amended to read:

"37-67-331. Revocation, suspension, or refusal to renew certificate license -- grounds -- procedure -- reinstatement. (1) The board may reprimand a licensee or revoke, suspend, or refuse to renew the certificate license of a registrant licensee found responsible for:

(a) fraud or deceit in obtaining a ~~certificate of registration license~~ certificate license;

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(b) gross negligence, incompetency, or misconduct in the practice of engineering or land surveying as a ~~registered~~ licensed professional engineer or professional land surveyor;

(c) a felony;

(d) a violation of rules for professional conduct for professional engineers and professional land surveyors adopted by the board;

(e) failing to comply with the Corner Recordation Act if the person is a professional land surveyor.

(2) Any person may make charges of fraud, deceit, gross negligence, incompetency, or misconduct against a ~~registrant~~ licensee. The charges must be made by affidavit, subscribed and sworn to by the person making them, and filed with the department. The charges must be investigated by the board. For purposes of investigation under this section, the board may require that a ~~registrant~~ licensee meet with the board.

(3) The board may require a ~~registrant~~ licensee to take a written or oral examination, or both, in a proceeding to reprimand the licensee or to revoke, suspend, or refuse to renew the ~~certificate of registration~~ license.

(4) If, after a hearing, five or more members of the board vote in favor of sustaining the charges, the board shall reprimand, the licensee or suspend, refuse to renew, or revoke the ~~certificate of registration~~ license of the ~~registered~~ licensed professional engineer or professional land surveyor.

(5) The board, for reasons it considers sufficient, may reissue a ~~certificate of registration~~ license to a person whose ~~certificate~~ license has been revoked if five or more members of the board vote in favor of the reissuance."

Section 67. Section 37-67-332, MCA, is amended to read:

"37-67-332. Violations -- penalties -- enforcement. (1) (a) A person commits a criminal offense if the person knowingly:

(i) practices or offers to practice engineering or land surveying in this state without being ~~registered~~ licensed under this chapter;

(ii) presents or attempts to use the ~~certificate of registration~~ license or the seal of another person;

(iii) gives false or forged evidence to the board or department in obtaining a ~~certificate of registration~~ license;

(iv) impersonates another ~~registrant~~ licensee;

(v) attempts to use an expired, revoked, or emeritus ~~certificate of registration~~ license; or

(vi) violates a provision of this chapter.

(b) A person convicted under subsection (1)(a) shall ~~on conviction~~ be fined an amount of not less than \$100 or more than \$500 or be incarcerated in the county jail for a period not exceeding 3 months, or both.

(2) All officers of the law of this state or one of its political subdivisions shall enforce this chapter and prosecute persons violating it. The attorney general shall act as legal adviser of the board and render legal assistance necessary in carrying out this chapter.

(3) The board may apply to the appropriate court for an injunction against a person found by the board to have practiced or attempted or offered to practice engineering or land surveying in this state without a valid ~~certificate of registration~~ license.

(4) If a person violates an injunction against practice without a valid ~~certificate of registration~~ license, the court may impose a fine in an amount not to exceed \$25,000."

Section 68. Section 37-68-201, MCA, is amended to read:

"37-68-201. Organization -- meetings -- ~~quorum~~ -- rulemaking power -- seal. (1) Each July, the board shall elect from its membership a president, vice president, and secretary-treasurer.

(2) The board shall meet quarterly and at other times it considers necessary.

~~(3) A majority of the members of the board shall constitute a quorum for transaction of business.~~

~~(4)~~(3) The board may:

(a) adopt rules for the administration of this chapter, for the licensing of electrical contractors, and for the examination and licensing of master and journeymen electricians;

(b) adopt a seal;

(c) cause the prosecution and enjoinder of persons violating this chapter."

Section 69. Section 37-69-201, MCA, is amended to read:

"37-69-201. ~~Chairman -- quorum~~ Presiding officer. (1) The board shall annually select a ~~chairman~~ presiding officer from its members.

~~(2) A majority of the board constitutes a quorum."~~

Section 70. Section 70-22-103, MCA, is amended to read:

"70-22-103. Definitions. Except ~~where~~ when the context indicates a different meaning, terms used

in this part ~~shall~~ must be defined as follows:

(1) An "accessory to a corner" ~~is~~ means any exclusively identifiable physical object whose spatial relationship to the corner is recorded. Accessories may be bearing trees, bearing objects, monuments, reference monuments, line trees, pits, mounds, charcoal-filled bottles, steel or wooden stakes, or other objects.

(2) The "board" ~~is~~ means the board of professional engineers and professional land surveyors; provided for in 2-15-1873.

(3) A "corner", unless otherwise qualified, means a property corner or a property controlling corner or a public land survey corner or any combination of these.

(4) A "monument" ~~is~~ means an accessory that is presumed to occupy the exact position of a corner.

(5) A "property controlling corner" for a property ~~is~~ means a public land survey corner or any property corner ~~which~~ that does not lie on a property line of the property in question but ~~which~~ that controls the location of one or more of the property corners of the property in question.

(6) A "property corner" ~~is~~ means a geographic point on the surface of the earth and is on, is a part of, and controls a property line.

(7) A "public land survey corner" ~~is~~ means any corner actually established and monumented in an original survey or resurvey used as a basis of legal description for issuing a patent for the land to a private person from the United States government.

(8) A "reference monument" ~~is~~ means a special monument that does not occupy the same geographical position as the corner itself but whose spatial relationship to the corner is recorded and ~~which~~ that serves to witness the corner.

(9) A "~~registered~~ surveyor" ~~is~~ means a ~~surveyor person~~ who is ~~registered~~ licensed to practice land surveying under Title 37, chapter 67, and has a paid-up license for that calendar year or who is authorized under Title 37, chapter 67, to practice land surveying."

NEW SECTION. **Section 71. Repealer.** Sections 10-1-605, 37-2-111, and 37-66-305, MCA, are repealed.

NEW SECTION. **Section 72. Codification instruction.** (1) [Section 7] is intended to be codified as an integral part of Title 37, chapter 1, part 3, and the provisions of Title 37, chapter 1, part 3, apply

to [section 7].

(2) [Section 36] is intended to be codified as an integral part of Title 37, chapter 54, part 2, and the provisions of Title 37, chapter 54, part 2, apply to [section 36].

(3) [Section 42] is intended to be codified as an integral part of Title 37, chapter 65, part 3, and the provisions of Title 37, chapter 65, part 3, apply to [section 42].

NEW SECTION. **Section 73. Effective dates.** (1) [Sections 8, 71, and 72 and this section] are effective on passage and approval.

(2) [Sections 1 through 7 and 9 through 70] are effective October 1, 2001.

- END -

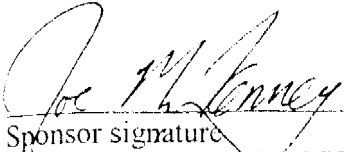
FISCAL NOTE

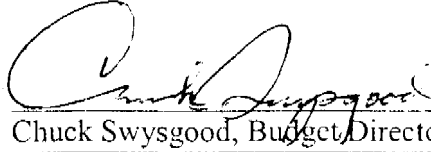
Bill #: HB0120

Title: Generally revise professional licensing laws

Primary
Sponsor: Joe McKenney

Status: As introduced

 1/5/01
Sponsor signature Date

 1/5/01
Chuck Swysgood, Budget Director Date

Fiscal Summary

	<u>FY2002</u> <u>Difference</u>	<u>FY2003</u> <u>Difference</u>
Expenditures:	0	0
Revenue:	0	0
Net Impact on General Fund Balance:	0	0

<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>	
	X	Significant Local Gov. Impact		X	Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts
	X	Dedicated Revenue Form Attached		X	Family Impact Form Attached

Fiscal Analysis

ASSUMPTIONS:

1. The Department of Commerce, Professional and Occupational Licensing Division, has reviewed the proposed legislation and has found that there would be no fiscal impact to the department. The bill is housekeeping in nature and was requested by the division.

HB 120

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FISCAL NOTE

Bill #: HB0120

Title: Generally revise professional licensing laws

Primary

Sponsor: Joe McKenney

Status: Third Reading

Sponsor signature	Date	Chuck Swysgood, Budget Director	Date
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Fiscal Summary

	<u>FY2002 Difference</u>	<u>FY2003 Difference</u>
Expenditures:		
State Special Revenue	\$1,482	\$1,482
Revenue:	0	0
Net Impact on General Fund Balance:	\$0	\$0

<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>	
	X	Significant Local Gov. Impact		X	Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts
	X	Dedicated Revenue Form Attached		X	Family Impact Form Attached

Fiscal Analysis

ASSUMPTIONS:

Department of Commerce

- HB 120, as amended, adds two members to the Board of Real Estate Appraisers. The board has four full board meetings each year, and has four additional meetings each year of the Screening Panel. One of the new board members would be appointed to the Screening Panel.

(continued)

2. The costs for two members to attend four one-day full board meetings, and for one board member to attend four meetings of the Screening Panel each year is estimated to be \$1,482 in FY 2002 and FY 2003.

Four full board meetings are \$400 per diem (2 x 4 x \$50) which is recorded as a personal services cost; \$345 mileage (2 x 500 miles x \$.345); \$291 lodging (2 x 4 x \$36.40); and \$184 meals (2 x 4 x \$23). Four Screening Panel meetings would be \$200 (4 x \$50) for per diem. Travel costs are not expected for Screening Panel meetings as conference calls can be held. Indirect costs on the total \$600 per diem each year would be \$62 (.1025 x \$600).

FISCAL IMPACT:

	<u>FY2002</u> <u>Difference</u>	<u>FY2003</u> <u>Difference</u>
<u>Expenditures:</u>		
Personal Services	600	600
Operating Expenses	<u>882</u>	<u>882</u>
TOTAL	\$1,482	\$1,482
<u>Funding:</u>		
State Special Revenue (02)	\$1,482	\$1,482
<u>Revenues:</u>	0	0
<u>Net Impact to Fund Balance (Revenue minus Expenditure):</u>		
State Special Revenue (02)	(\$1,482)	(\$1,482)

INDEX TO BILLS IN COMMITTEE

September 10, 2001

- Committee: (H) Business and Labor -

01:34 PM

- HB 120** SPONSOR: McKenney, Joe SHORT TITLE: Generally revise professional licensing laws
BY REQUEST OF: Department Of Commerce
REFERRED ON: 12/28/2000 HEARD ON: 01/11/2001
EXECUTIVE ACTION: 01/17/2001 - Bill Passed as Amended -- VOTE: 19 - 0
FINAL DISPOSITION: 05/01/2001 Chapter Number Assigned
-
- HB 136** SPONSOR: Fisher, Stanley SHORT TITLE: Allow funeral directors to sell prepaid funeral insurance
REFERRED ON: 12/28/2000 HEARD ON: 01/11/2001
TABLED ON: 01/16/2001
FINAL DISPOSITION: 02/23/2001 (H) Missed Deadline for General Bill Transmittal
-
- HB 138** SPONSOR: Mangan, Jeff SHORT TITLE: Revise deferred deposit loan laws
BY REQUEST OF: Department Of Commerce
REFERRED ON: 12/28/2000 HEARD ON: 01/12/2001
EXECUTIVE ACTION: 01/12/2001 - Bill Passed as Amended -- VOTE: 19 - 0
FINAL DISPOSITION: 03/19/2001 Chapter Number Assigned
-
- HB 139** SPONSOR: Gallik, Dave SHORT TITLE: Property insurance rate reduction for certain fire resistant structures
REFERRED ON: 12/28/2000 HEARD ON: 01/11/2001
EXECUTIVE ACTION: 01/25/2001 - Bill Passed as Amended -- VOTE: 12 - 7
FINAL DISPOSITION: 02/23/2001 (H) Missed Deadline for General Bill Transmittal
-
- HB 141** SPONSOR: Somerville, Roger SHORT TITLE: Revise mint oil laws
REFERRED ON: 12/28/2000 HEARD ON: 01/10/2001
EXECUTIVE ACTION: 01/10/2001 - Bill Passed -- VOTE: 19 - 0
FINAL DISPOSITION: 03/16/2001 Chapter Number Assigned
-
- HB 143** SPONSOR: Somerville, Roger SHORT TITLE: Revise income tax laws for pass-through entities
BY REQUEST OF: Department Of Revenue
REFERRED ON: 12/28/2000
FINAL DISPOSITION: 03/29/2001 Chapter Number Assigned
-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on January 11, 2001 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Rod Bitney, Vice Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Dennis Himmelberger (R)
Rep. Carol C. Juneau (D)
Rep. Jim Keane (D)
Rep. Rick Laible (R)
Rep. Bob Lawson (R)
Rep. John Musgrove (D)
Rep. William Price (R)
Rep. Allen Rome (R)
Rep. Donald Steinbeisser (R)
Rep. Brett Tramelli (D)
Rep. James Whitaker (R)

Members Excused: Rep. Roy Brown (R)

Members Absent: None.

Staff Present: Gordon Higgins, Legislative Branch
Jane Nofsinger, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB120, HB136, HB139, HB150,
1/11/2001
Executive Action: HB87, HB51, HB98

rates. He said some language changes could help insurers stand in support.

{Tape : 2; Side : B; Approx. Time Counter : 23.7}

Mr. Metropolous supported the concept but not in the way the bill was a mandate. He said the bill intervened in the marketplace. He would support the amendment proposed by **Mr. McGlenn**.

{Tape : 2; Side : B; Approx. Time Counter : 25.8}

Mr. VanHorsen said insurance is a business and there are costs associated with a product. Insurance's product is the payment of claims. The price of the product is driven by the cost. The cost is determined by the claims experienced. He cautioned the committee about mandating reductions when the marketplace already exists. He said, however, with certain changes, State Farm would withdraw its opposition.

{Tape : 3; Side : A; Approx. Time Counter : 2}

Ms. Lenmark supported Mr. McGlenn's amendments saying the Montana Code already had a detailed procedure for appealing rates. She said she was also concerned that the effective date of passage might be immediate and the insurance companies would not have adequate time. She also said she resisted the development of standards by other entities than the insurers to reduce the rates. She said she supported the intent of the bill but submitted that the intent is already accomplished.

EXHIBIT (buh08a09) EXHIBIT (buh08a10)

Questions from the Committee and Their Responses:

{Tape : 3; Side : A; Approx. Time Counter : 13}

REP. LAWSON asked **Mr. McGlenn** if rate reductions were dictated in state law for installing fire alarms. **Mr. McGlenn** replied they were not.

HEARING ON HB120

{Tape : 3; Side : A; Approx. Time Counter : 19.9}

Sponsor: **REP. JOE MCKENNEY, HD 49, Great Falls**

Proponents: **Steve Meloy, Department of Commerce**
Lon Mitchell, Department of Commerce

Jennifer Massman, Department of Commerce
Charlene Norris, Department of Commerce
Jani McCall, Deaconess Billings Clinic
Peggy Trenk, MT Assn. Of Realtors

Opponents:

Greg Gould, attorney

Opening by Sponsor:

REP. JOE MCKENNEY, HD49, Great Falls, said he was sponsoring this bill at the request of the Department of Commerce. He said the bill contained a lot of details and he asked the committee to direct their questions to the witnesses.

Proponents Testimony:

Mr. Meloy said the Department of Commerce had put all of their housekeeping concerns in one bill and presented a written summary to the committee. EXHIBIT(buh08a11) He said the bill clarified existing law and made existing statutes briefer. Mr. Mitchell, Ms. Norris, and Ms. Massman presented various sections of the exhibit.

Ms. MCCALL presented written testimony on behalf of Billings Deaconess Clinic and the Montana County Attorneys Assn.

EXHIBIT(buh08a12)

Ms. Trenk said the Montana Assn. Of Realtors and its 3000 members supported the bill saying it brings the law into line with how the marketplace functions.

Opponents Testimony:

Mr. Gould said he was concerned with some issues not addressed in the bill and presented written testimony. EXHIBIT(buh08a13)

Questions from the Committee and Their Responses:

REP. MATTHEWS asked Ms. Grief a question concerning requirements for a landscape architect. She replied they must take a national exam at this point but they are looking at adding educational requirements. Many individuals may be grand fathered in she said if educational requirements are added. REP. MATTHEWS asked how many landscape architects were licensed in Montana and she

replied there were 84 who were both in and out-of-state and 44 who were in-state.

Closing by Sponsor:

REP. MCKENNEY said he would like to meet with Mr. Gould before Executive Action was taken on the bill. He urged the committee to pass HB120.

{Tape : 4; Side : A; Approx. Time Counter : 0.0}

EXECUTIVE ACTION ON HB98

REP. LAWSON moved HB98 DO PASS. Motion Carried Unanimously. 19-0.

EXECUTIVE ACTION ON HB51

{Tape : 4; Side : A; Approx. Time Counter : 3.7}

REP. BITNEY said he had some reservations about the bill because it was unfair to employers and could cause their rates to go up.

REP. KEANE said he would support the bill because in Montana if you have two jobs you can only collect unemployment from one. He said he thought the bill would promote entrepreneurship as self-employed people would not be penalized.

CHAIRMAN MCKENNEY said he liked the bill and even though he had reservations he was putting them aside. He said many individuals when they first go into business have to have a part-time job to supplement their income.

REP. GALLIK moved HB51 DO PASS. Motion Carried Unanimously. 19-0.

EXECUTIVE ACTION ON HB87

{Tape : 4; Side : A; Approx. Time Counter : 8.2}

REP. MCKENNEY said he had spoken with the bill's sponsor, **REP. MASOLO**, who had told him she would prefer the amendments not be inserted into the bill. **REP. MASOLO** said she felt the amendments were unnecessary as they addressed matters already in the Montana Code.

HOUSE OF REPRESENTATIVES
ROLL CALL

HOUSE BUSINESS AND LABOR COMMITTEE

DATE JAN. 11, 2001

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
Rep. Joe McKenney	✓		
Rep. Gary Matthews	✓		
Rep. Roy Brown			✓
Rep. Kathleen Galvin-Halcro	✓		
Rep. Carol Juneau	✓		
Rep. Rick Laible	✓		
Rep. John Musgrove	✓		
Rep. Nancy Rice-Fritz	✓		
Rep. Don Steinbeisser	✓		
Rep. Jim Whitaker	✓		
Rep. Rod Bitney	✓		
Rep. Sylvia Bookout-Reinicke	✓		
Rep. Dave Gallik	✓		
Rep. Dennis Himmelberger	✓		
Rep. Jim Keane	✓		
Rep. Bob Lawson	✓		
Rep. Bill Price	✓		
Rep. Brett Tramelli	✓		
Rep. Allen Rome	✓		

Exhibit 11 is for HB 139, not HB 120.

EXHIBIT 12
DATE 1-11-01
HB 12 (12)

DEACONESS BILLINGS CLINIC
January 11, 2001 Testimony
House Business and Labor Committee
HB 120

Deaconess Billings Clinic, on behalf of our patients and physicians potentially harmed by this law, supports repeal of MCA 37-2-111. This is an outdated law, initially adopted in 1921. It has never been enforced or used in the state of Montana. The Attorney General's office recently advised the State Board of Medical Examiners that the law was probably enforceable, although "nonsensical," and went on to say, "While I am unable to relieve you from the burden of complying with this antiquated statute, I suggest that you approach the 2001 legislature with a proposal to repeal § 37-2-111."

On its face, MCA 37-2-111 requires a physician to "report" a patient he believes to be an "habitual user of drugs" or "drug addict" to the county attorney within 48 hours. It requires a physician to "register" patients prescribed narcotics for 30 days with the county attorney. And it requires the county attorney to "immediately file a complaint" against that person. The definition of "habitual user of drugs" or "drug addict" includes anyone who needs an opiod analgesic for 30 consecutive days, even if the patient has a legitimate medical need for chronic pain relief. The law imposes criminal penalties, including monetary penalties and imprisonment, upon physicians who violate the reporting obligations.

Deaconess Billings Clinic, in support of the State Board of Medical Examiners' carefully considered position on this issue, is concerned that MCA 37-2-111 may stand in the way of effective pain management by physicians in this State. The State Board of Medical Examiner's concern is reflected in an initiative by the Federation of State Medical Boards, the World Health Organization, the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO), and many physician professional societies to encourage physicians to more aggressively treat pain by the use of opiod analgesics, when that is medically appropriate.

The Federation of State Medical Boards begins its "Model Guidelines for the Use of Controlled Substances for the Treatment of Pain" by addressing the patients most harmed by inadequate pain medication:

Pain often is inadequately treated in a wide range of patient groups, including trauma and surgery patients, patients with cancer, those who are dying, as well as those who are living with a variety of chronic painful conditions. In addition to the direct effects of pain on health and quality of life, unrelieved pain may result in unscheduled hospital admissions; excessive use of emergency rooms, loss of employment, spouse, and family; and loss of life itself when some chronic pain patients commit suicide.

The State Board of Medical Examiners concern is well reflected in a recent chilling disciplinary matter in Oregon, where a physician allowed nursing home patients to suffer from unrelieved pain, often while they were dying, because of unwillingness to prescribe sufficient opiod analgesics. Fortunately, the Oregon State Board disciplined this physician for unprofessional conduct. We don't want patients to suffer in this way in Montana, and we certainly don't want that to happen because physicians are worried about having to report patients as "drug addicts" or "habitual users of drugs" to county attorneys under a "nonsensical" law.

The use of opiod analgesics for the treatment of pain must be distinguished from treatment of drug addiction itself. Physicians are already prevented, by federal law, from prescribing opiod analgesics to treat drug addiction. Repeal of MCA 37-2-111 will not, therefore, in any way allow physicians to prescribe opiod analgesics to addicts, who have no legitimate medical reason for receiving the drug.

Today, the standard of care for physicians often requires them to treat patients with chronic pain with opiod analgesics for more than 30 consecutive days. The Montana State Board of Medical Examiners has established guidelines for physicians who are appropriately treating pain with opiod analgesics. It is recommending repeal of MCA 37-2-111 because it stands as a potential barrier to the standard of care for the treatment of pain.

Deaconess Billings Clinic urges your support for repeal of MCA 37-2-111, on behalf of patients who require opiod analgesics to deal with chronic pain, and on behalf of the physicians who may be deterred from prescribing needed pain medication because doing so makes them potentially subject to criminal penalties for failing to report patients to the county attorney. We look forward to your support of repeal.

Kathy Kenyon, Legal Counsel DBC
Jani McCall, Lobbyist DBC



EXHIBIT 12A
DATE 1-11-01
HB 120 (12A)
MONTANA COUNTY ATTORNEYS ASSOCIATION
PO Box 201439
Helena, Montana 59620-1439

January 10, 2001

Chairman
Business and Labor Committee

RE: HB 120

Dear Sir:

I am writing to support the repeal of Section 37-2-111 contained in HB120. The statute is anitquated, and as noted by the Attorney General, is probably unenforceable. To my knowledge, no one has ever been prosecuted under Section 37-2-111.

While the statute may have met some legitimate need when it was adopted in 1921, the law is now contrary to accepted medical practices for pain management. I believe that it is inappropriate to require physicians to report patients who need long term pain medication to the county attorney. It is even more inappropriate to require that the county attorney prosecute a physician who is simply attempting to practice his profession in a compassionate and competent manner.

As president of the Montana County Attorneys Association, I urge the committee to repeal Section 37-2-111 MCA, as provided in HB120.

Sincerely,

Christopher G. Miller, president
Montana County Attorneys Association

LUXAN & MURFITT

PROFESSIONAL LIMITED LIABILITY PARTNERSHIP
ATTORNEYS AT LAW

MONTANA CLUB BUILDING • 24 W. SIXTH AVE.
P.O. BOX 1144 • HELENA, MONTANA 59624

(406) 442-7450
FAX (406) 442-7361

EXHIBIT 13
DATE 1-11-01
HB 120

(14)
GARY L. DAVIS
DAN E. REAGOR
PATRICK E. MELBY
KIM BLAZER
CANDACE TORGERSON PAYNE
GREGORY G. GOULD
JAMES B. LIPPERT

WALTER S. MURFITT OF COUNSEL
H.J. LUXAN (1918-1984)

BEFORE THE HOUSE BUSINESS AND LABOR COMMITTEE

Testimony Regarding HB 120 January 11, 2001

I am an attorney from Helena, Montana. I frequently represent professional individuals who are licensed by the boards that are established and governed by the laws which are the subject of HB 120. I am here on behalf of a number of my clients who have serious concerns about some of the provisions that are in this bill and some that are not.

What is not addressed in the bill:

The licensing boards established under these laws are given an incredible amount of power and discretion. In many instances, these boards and their members may exercise that discretion wisely and fairly. Many citizens provided many hours of service on these boards in an effort to improve the practice of the various professions regulated.

However, there are serious problems with the manner in which some of these Boards and their members exercise their powers.

The law requires that before a formal disciplinary proceeding can be started, the Boards must screen complaints to determine that there is reasonable cause to believe that a violation of standards has occurred that justifies disciplinary proceedings. One of the most serious problems is that no fair or effective screening is done. Boards often do not identify the particular standard that may have been violated. In a number of cases, the Board does not even discuss or identify what the standard or rule is against which the licensee's conduct is to be measured. Yet, they authorized commencement of formal disciplinary action. It can take months or years and tens of thousands of dollars in legal costs to find out what the standard is that controls, and sometimes to find out that there is no standard.

Section 37-1-307, 308 and 309 should be amended to require that the Boards

determine whether a particular violation may have occurred, and to identify the specific standard or rule under which the licensee is to be charged. This is a matter of basic fairness. The Board should not be permitted to make up the rules as they go along.

Another serious problem is the filing of complaints and the use of the complaint and disciplinary problem by competitors to gain a competitive advantage. The fact that members of the professions regulated serve on the Boards unfortunately makes the Boards more susceptible to such misuse in some cases. Yet there is a lack of adequate accountability for persons who abuse the complaint process by filing frivolous or competitively motivated complaints. The bulk of complaints filed before some board are filed not by clients or others who have been harmed by some lack of professional conduct, but rather by competitors who stand to gain by miring the licensee in a disciplinary proceeding and tarnishing their reputation with the taint of discipline.

The statutes should be amended to require a person who files a frivolous complaint to pay the costs of the Board and the licensee in processing and defending the complaint. There also needs to be more accountability for Board members who use or abuse their position for such improper purposes.

What is addressed in the bill:

Section 3 of the bill would eliminate the current three-member quorum requirement for the Board of Real Estate Appraisers. Similar changes are made for other Boards having specific quorum requirements, but we have seen the greatest problem with the Board of Real Estate Appraisers, partly because it has only 5 members. Section 6 would establish the following general quorum requirement for all licensing boards:

A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.

This proposed language would legalize the Board of Real Estate Appraiser's current practice of screening cases with a two-member screening panel, because it would require a mere majority of the panel, rather than a majority of the Board, to conduct Board business.

Under current law, a board may establish a screening panel to determine whether there is reasonable cause to believe a licensee has violated a statute or rule justifying disciplinary proceedings. Mont. Code Ann. § 37-1-307(1)(e). The law does not establish

any requirements regarding the number of Board members that must be included on any screening panel.

Under the Board's current practices, which violate the current three-member quorum requirement, the Board uses a two-member panel to screen cases. This means that only two individuals make the screening determination. We have seen that one assertive Board member on the screening panel has enough power to push through a "finding" of reasonable cause and initiate a disciplinary prosecution. Such a prosecution, regardless of merit or eventual outcome, is extremely expensive to defend and damaging to the appraiser's business and reputation. This is a particularly troublesome practice in light of the apparent willingness of the Board of Real Estate Appraisers to allow itself to be used by appraisers as a competitive weapon against other appraisers.

Perhaps this proposed change is workable with Boards having larger numbers of members to serve on screening panels. However, by law the Board of Real Estate Appraisers has only five (5) members. This proposed quorum provision concentrates far too much power in the hands of only one or two individuals to make screening decisions that will have very significant adverse impacts upon licensees. The power to initiate disciplinary prosecutions should be spread among more Board members, as a check to assure greater consensus regarding prosecution and to discourage abuse of the Board's screening function.

In addition, Section 3 of HB 120 proposes to eliminate the current requirement that only one member of the Board may be primarily affiliated with the same recognized appraisal group defined by the Appraisal Foundation. This change would allow greater concentration of members on the Board who are part of the same appraiser organization, further threatening through selective prosecution the livelihoods of those who may belong to different appraiser groups.

HB 120 threatens to legitimize the current abusive practices of the Board of Real Estate Appraisers, and should be amended to eliminate rather than to perpetuate the inappropriate concentration of power among only one or two Board members. The bill also should be amended to clearly require that specific screening determinations must be made before prosecution may be initiated, i.e., a finding must be made specifying the particular statute, rule or standard that may have been violated and providing that prosecutions are limited to those alleged violations. In addition, the bill should be amended to establish accountability for persons who abuse the complaint process, such as by filing meritless complaints or by filing complaints for the purpose of harming

January 11, 2001

Page 4

competitors.

I thank you for your attention to these concerns of your constituents. I would be glad to provide any additional information or answer any questions you may have.

Sincerely,

GREGORY G. GOULD

A handwritten signature in dark ink, appearing to read "G. Gould", written over the printed name.

for LUXAN & MURFITT, PLLP

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business and Labor Committee

DATE JAN 11, 2001

BILL NO. 120

SPONSOR(S) REP. Joe McKenney

Revise professional licensing laws

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE
CIRCLE

NAME

ADDRESS

REPRESENTING

POI	SHARON McCullough	Commerce	POL
POI	Lisa Addington	Commerce	POL
POI	Brenda St. Clair	Commerce	POL
POI	Louj Sandrock	Commerce	POL
POI	Sharon		
POI	Linda Snif	Commerce	POL
POI	Cheryl Brant	Commerce	POL
POI	Chandee Nourse	Commerce	POL
POI	Barbara Swehla	Commerce	POL-Bd. of Nsg
POI	Lyn Mitchell	Commerce	POL
POI	Ken Moore	2016 University Helena	St. Bd. Real Estate Appraisers
POI	Jeanie Massman	Commerce	Commerce POL
POI	Sami Butler	Helena	MNA
POI	Jani McCall	Blg. P	DBA/MCAA

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

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MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business and Labor Committee

DATE Jan. 11, 2001

BILL NO. 130

SPONSOR(S) Rep. Joe McKenney

Revise professional licensing laws

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE
CIRCLE

	NAME	ADDRESS	REPRESENTING
☒ POI	Peggy Trenw	808 N. mt. St. 105-	MT. Assoc. of Realtors
☐ POI	Greg Bond	P.O. Box 1144 Helena MT 59620	Cremers
☒ POI	Steve Meloy	Dept of Comm	Helena
☒ POI	Jannie Worsch	DOC	Helena
☐ POI			
☐ POI			
☐ POI			
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☐ POI			

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

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MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on January 17, 2001 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Rod Bitney, Vice Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Carol C. Juneau (D)
Rep. Jim Keane (D)
Rep. Rick Laible (R)
Rep. Bob Lawson (R)
Rep. William Price (R)
Rep. Allen Rome (R)
Rep. Donald Steinbeisser (R)
Rep. Brett Tramelli (D)
Rep. James Whitaker (R)

Members Excused: Rep. Roy Brown (R)
Rep. Dennis Himmelberger (R)
Rep. John Musgrove (D)

Members Absent: None.

Staff Present: Gordon Higgins, Legislative Branch
Jane Nofsinger, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB220, 1/17/2001
Executive Action: HB230, HB158, HB120, HB218,
HB245

{Tape : 1; Side : A; Approx. Time Counter : 0}

EXECUTIVE ACTION ON HB230

Motion/Vote: REP. GALLIK moved that HB230 DO PASS AS AMENDED.
Motion carried unanimously.

EXECUTIVE ACTION ON HB120

Motion/Vote: REP. MCKENNEY moved that HB120 DO PASS AS AMENDED.
Motion carried unanimously.

EXECUTIVE ACTION ON HB158

Motion: REP. GALLIK moved that HB158 DO PASS.
Substitute Motion/Vote: REP. BITNEY made a substitute motion that
HB158 BE TABLED. Substitute motion carried 11-8 with Fritz,
Gallik, Galvin-Halcro, Juneau, Keane, Matthews, Musgrove, and
Tramelli voting no.

EXECUTIVE ACTION ON HB218

Motion/Vote: REP. BOOKOUT-REINICKE moved that HB218 DO PASS AS
AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB245

Motion/Vote: REP. GALLIK moved that HB245 DO PASS. Motion failed
8-11 with Fritz, Gallik, Galvin-Halcro, Juneau, Laible, Matthews,
Musgrove, and Tramelli voting aye.

Substitute Motion/Vote: REP. LAWSON made a substitute motion that
HB245 BE TABLED. Substitute motion carried 11-8 with Fritz,
Gallik, Galvin-Halcro, Juneau, Keane, McKenney, Musgrove, and
Tramelli voting no.

EXECUTIVE ACTION ON HB220

Motion/Vote: REP. LAWSON moved that HB220 DO PASS AS AMENDED.
Motion carried unanimously.



HOUSE STANDING COMMITTEE REPORT

January 17, 2001

Page 1 of 3

Mr. Speaker:

We, your committee on **Business and Labor** report that **House Bill 120** (first reading copy - white) do pass as amended.

Signed: _____

Joe McKenney
Representative Joe McKenney, Chair

And, that such amendments read:

1. Title, line 8.

Following: "PURPOSES;"

Insert: "INCREASING THE NUMBER OF MEMBERS ON THE BOARD OF REAL ESTATE APPRAISERS;"

2. Title, page 2, line 9.

Following: "DATES"

Insert: "AND A TERMINATION DATE"

3. Page 3, line 16.

Strike: "five"

Insert: "seven"

4. Page 3, line 17.

Strike: "Three"

Insert: "Five"

5. Page 13, line 25.

Following: "no"

Strike: "contraindications for"

Insert: "medical factors or conditions that render"

6. Page 13, line 26.

Following: "use"

Insert: "inadvisable as a treatment or remedy for hearing loss"

Committee Vote:

Yes 19, No 0.

131157SC.hdc

1/17 MP

64

7. Page 16, line 2.
Strike: "vice"

8. Page 25, line 22.
Strike: "-- deposit of fee"
Strike: "(1)"

9. Page 25, lines 27 and 28.
Strike: subsection (2) in its entirety

10. Page 26, line 16.
Following: "licensed"
Strike: "be registered"

11. Page 26.
Following: line 16
Insert: "Section 44. Section 37-66-304, MCA, is amended to read:
"37-66-304. Qualifications not required -- application for licensure. (1) A person wishing to practice landscape architecture in this state shall apply to the department for a license and successfully pass a written examination established by the board.
(2) Each applicant must be admitted to the examination without prerequisite qualifications.""
Renumber: subsequent sections

12. Page 44, line 26.
Strike: "71"
Insert: "72"
Strike: "72"
Insert: "73"

13. Page 44, line 28.
Following: "7"
Strike: "and"
Insert: ", "
Following: "9 through"
Strike: "70"
Insert: "44, and 46 through 71"
Following: "2001."
Insert: "(3) [Section 45] is effective October 1, 2005."

14. Page 44.
Following: line 28
Insert: "NEW SECTION. Section 75. Termination. [Section 44] terminates September 30, 2005."

- END -

131157SC.hdc

HOUSE OF REPRESENTATIVES
ROLL CALL

HOUSE BUSINESS AND LABOR COMMITTEE

DATE JAN. 17, 2001

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
Rep. Joe McKenney	✓		
Rep. Gary Matthews	✓		
Rep. Roy Brown			✓
Rep. Kathleen Galvin-Halcro	✓		
Rep. Carol Juneau	✓		
Rep. Rick Laible	✓		
Rep. John Musgrove			✓
Rep. Nancy Rice-Fritz	✓		
Rep. Don Steinbeisser	✓		
Rep. Jim Whitaker	✓		
Rep. Rod Bitney	✓		
Rep. Sylvia Bookout-Reinicke	✓		
Rep. Dave Gallik	✓		
Rep. Dennis Himmelberger			✓
Rep. Jim Keane	✓		
Rep. Bob Lawson	✓		
Rep. Bill Price	✓		
Rep. Brett Tramelli	✓		
Rep. Allen Rome	✓		

House of Representatives

Roll Call Vote

BUSINESS & LABOR COMMITTEE

HB 12003. agh Unan
Pass

DATE JAN. 17, 2001 Bill NO. HB 120 NUMBER 19-0 UNAN

MOTION: REP. MCKENNEY MOVE TO PASS AS AMENDED

HB 012002. agh VOICE UNAN.
HB 012004. agh 18-1 JUNE
HB 012001. agh VOICE UNAN

Name	AYE	NO
Rod Bitney, V.C., Majority (R)		
Gary Matthews, V.C., Minority (D)		
Roy Brown (R)		
Dave Gallik (D)		
Kathleen Galvin-Halcro (D)		
Dennis Himmelberger (R)		
Carol Juneau (D)		
Jim Keane (D)		
Rick Laible (R)		
Bob Lawson (R)		
Nancy Rice-Fritz (D)		
John Musgrove (D)		
Bill Price (R)		
Sylvia Bookout-Reinicke (R)		
Allen Rome (R)		
Don Steinbeisser (R)		
Brett Tramelli (D)		
Jim Whitaker (R)		
Joe McKenney (R) Chairman		
Count	19	0

Amendments to House Bill No. 120
1st Reading Copy

Requested by Representative John Musgrove

For the House Business and Labor Committee

Prepared by Gordon Higgins
January 6, 2001 (12:42PM)

1. Page 13, line 25.

Following: "no"

Strike: "contraindications for"

Insert: "factors or conditions that render"

2. Page 13, line 26.

Following: "use"

Insert: "inadvisable as a treatment or remedy for hearing loss"

- END -

Amendments to House Bill No. 120
1st Reading Copy

Requested by Representative Gary Matthews

For the House Business and Labor Committee

Prepared by Gordon Higgins
January 16, 2001 (6:46AM)

1. Title, page 2, line 9.

Following: "DATES"

Insert: "AND A TERMINATION DATE"

2. Page 26.

Following: line 16

Insert: "Section 44. Section 37-66-304, MCA, is amended to read:

"37-66-304. Qualifications not required -- application for licensure. (1) A person wishing to practice landscape architecture in this state shall apply to the department for a license and successfully pass a written examination established by the board.

(2) Each applicant must be admitted to the examination without prerequisite qualifications."

{Internal References to 37-66-304: None.}"

Renumber: subsequent sections

3. Page 44, line 26.

Strike: "71"

Insert: "72"

Strike: "72"

Insert: "73"

4. Page 44, line 28.

Following: "7"

Strike: "and"

Insert: ", "

Following: "9 through"

Strike: "70"

Insert: "44, and 46 through 71"

Following: "2001."

Insert: "(3) [Section 45] is effective October 1, 2005."

5. Page 44.

Following: line 28

Insert: "NEW SECTION. Section 75. {standard} Termination.
[Section 44] terminates September 30, 2005."

- END -

Amendments to House Bill No. 120
1st Reading Copy

For the House Business and Labor Committee

Prepared by Gordon Higgins
January 17, 2001 (7:27AM)

1. Page 16, line 2.

Strike: "vice"

2. Page 25, line 22.

Strike: "-- deposit of fee"

Strike: "(1)"

3. Page 25, lines 27 and 28.

Strike: subsection (2) in its entirety

4. Page 26, line 16.

Following: "licensed"

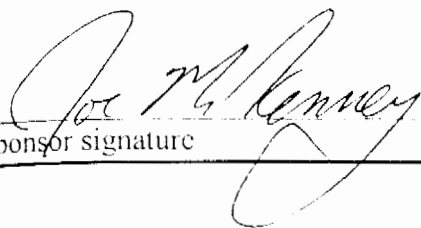
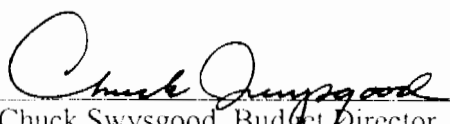
Strike: "be registered"

- END -

FISCAL NOTE

Bill #: HB0120 **Title:** Generally revise professional licensing laws

Primary Sponsor: Joe McKenney **Status:** Third Reading

 _____ Sponsor signature Date	-29-01	 _____ Chuck Swysgood, Budget Director Date	1/29/01
--	--------	--	---------

Fiscal Summary

	<u>FY2002 Difference</u>	<u>FY2003 Difference</u>
Expenditures:		
State Special Revenue	\$1,482	\$1,482
Revenue:	0	0
Net Impact on General Fund Balance:	\$0	\$0

<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>	
	X	Significant Local Gov. Impact		X	Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts
	X	Dedicated Revenue Form Attached		X	Family Impact Form Attached

Fiscal Analysis

ASSUMPTIONS:

Department of Commerce

- HB 120, as amended, adds two members to the Board of Real Estate Appraisers. The board has four full board meetings each year, and has four additional meetings each year of the Screening Panel. One of the new board members would be appointed to the Screening Panel.

HB 120 #2

(continued)

2. The costs for two members to attend four one-day full board meetings, and for one board member to attend four meetings of the Screening Panel each year is estimated to be \$1,482 in FY 2002 and FY 2003.

Four full board meetings are \$400 per diem (2 x 4 x \$50) which is recorded as a personal services cost; \$345 mileage (2 x 500 miles x \$.345); \$291 lodging (2 x 4 x \$36.40); and \$184 meals (2 x 4 x \$23). Four Screening Panel meetings would be \$200 (4 x \$50) for per diem. Travel costs are not expected for Screening Panel meetings as conference calls can be held. Indirect costs on the total \$600 per diem each year would be \$62 (.1025 x \$600).

FISCAL IMPACT:

	<u>FY2002 Difference</u>	<u>FY2003 Difference</u>
<u>Expenditures:</u>		
Personal Services	600	600
Operating Expenses	<u>882</u>	<u>882</u>
TOTAL	\$1,482	\$1,482
<u>Funding:</u>		
State Special Revenue (02)	\$1,482	\$1,482
<u>Revenues:</u>	0	0
<u>Net Impact to Fund Balance (Revenue minus Expenditure):</u>		
State Special Revenue (02)	(\$1,482)	(\$1,482)

2001 MONTANA LEGISLATURE - 57th Regular Session
INDEX TO BILLS IN COMMITTEE
- Committee: (S) Business and Labor -

HB 71 SPONSOR: Gallik, Dave SHORT TITLE: Clarify applicability of minimum wage and overtime laws
REFERRED ON: 01/18/2001 HEARD ON: 02/01/2001
EXECUTIVE ACTION: 03/02/2001 -Bill Concurred as Amended -- VOTE: 9 - 0
FINAL DISPOSITION: 03/20/2001 Chapter Number Assigned

HB 87 SPONSOR: Masolo, Gay Ann SHORT TITLE: One stop delivery system for workforce investment act
BY REQUEST OF: Department Of Labor And Industry
REFERRED ON: 01/16/2001 HEARD ON: 01/31/2001
EXECUTIVE ACTION: 03/16/2001 -Bill Concurred as Amended -- VOTE: 9 - 0
FINAL DISPOSITION: 04/30/2001 Chapter Number Assigned

HB 95 SPONSOR: Matthews, Gary SHORT TITLE: Revise licensing of weighing and measuring devices
BY REQUEST OF: Department Of Commerce
REFERRED ON: 02/05/2001 HEARD ON: 03/01/2001
TABLED ON: 03/08/2001
FINAL DISPOSITION: 04/26/2001 (S) Died in Standing Committee

HB 98 SPONSOR: Lewis, Dave SHORT TITLE: Revise chiropractic legal panel funding
REFERRED ON: 01/16/2001 HEARD ON: 01/23/2001
EXECUTIVE ACTION: 01/23/2001 -Bill Concurred -- VOTE: 8 - 0
FINAL DISPOSITION: 02/08/2001 Chapter Number Assigned

HB 120 SPONSOR: McKenney, Joe SHORT TITLE: Generally revise professional licensing laws
BY REQUEST OF: Department Of Commerce
REFERRED ON: 01/24/2001 HEARD ON: 03/01/2001
EXECUTIVE ACTION: 03/07/2001 -Bill Concurred as Amended -- VOTE: 7 - 2
FINAL DISPOSITION: 05/01/2001 Chapter Number Assigned

HB 138 SPONSOR: Mangan, Jeff SHORT TITLE: Revise deferred deposit loan laws
BY REQUEST OF: Department Of Commerce
REFERRED ON: 01/17/2001 HEARD ON: 02/07/2001
EXECUTIVE ACTION: 03/01/2001 -Bill Concurred -- VOTE: 7 - 0
FINAL DISPOSITION: 03/19/2001 Chapter Number Assigned

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MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN MIKE TAYLOR**, on March 1, 2001 at 8:00 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Mike Taylor, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Edward Butcher (R)
Sen. Vicki Cocchiarella (D)
Sen. Sam Kitzenberg (R)
Sen. Dale Mahlum (R)
Sen. Glenn Roush (D)

Members Excused: Sen. Dale Berry (R)
Sen. Don Ryan (D)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Kyanne Kelly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 95, 3/2/2001; HB 234,
3/2/2001; HB 120, 3/2/2001
Executive Action: HB 234; HB 138

Peggy Trenk, Association of Realtors, said she supports this bill.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SENATOR MIKE SPRAGUE asked if this bill would help it be possible to register vehicles electronically.

Joe Mazurek said yes.

Closing by Sponsor:

{Tape : 2; Side : A; Approx. Time Counter : 0.1}

REPRESENTATIVE BOB LAWSON, HD 80, WHITEFISH, said this bill would be limited to people who agree to conduct business electronically. He also pointed out that this act is a uniform law which would bring Montana into harmony with federal legislation.

HEARING ON HB 120

Sponsor: REPRESENTATIVE JOE MCKENNY, HD 49, GREAT FALLS

Proponents: Steve Meloy, Department of Commerce
Tim Moore, State Board of Real Estate Appraisers
Lewis Smith, Board of Nursing
Sami Butler, Montana Nurses Association
Peggy Trenk, Montana Association of Realtors
Jani McCall, Montana County Attorneys Association
Kristi Blazer, Representing herself
Jack Wells, Senator from Bozeman
Dr. George Olson, Montana State Dental Board
Lewis Smith, Board of Dentistry
Sheldon Ivers, Board of Dentistry

Opponents: Lee Wiser, Representing himself
Jonathan Mott, Representing himself

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Opening Statement by Sponsor:

{Tape : 2; Side : A; Approx. Time Counter : 3.3}

REPRESENTATIVE JOE MCKENNY, HD 49, GREAT FALLS, said this is a housekeeping bill requested by the Department of Commerce, Professional and Occupational Licensing Division.

Proponents' Testimony:

Steve Meloy, Department of Commerce, gave a hand out which explained in detail the proposed changes to each section.
EXHIBIT(bus47a05)

Tim Moore, State Board of Real Estate Appraisers, said he supports the bill as amended, especially the parts relating to the Board of Real Estate.

Lewis Smith, Board of Nursing, gave a copy of his written testimony as well as a copy of amendments he proposed to the bill. **EXHIBIT(bus47a06) EXHIBIT(bus47a07)**

Sami Butler, Montana Nurses Association, said she supports the bill and also supports the amendments proposed by the Board of Nursing.

Peggy Trenk, Montana Association of Realtors, said she supports the bill.

Jani McCall, Montana County Attorneys Association, said she supports this bill. She handed in written testimony from the clients she represented. **EXHIBIT(bus47a08) EXHIBIT(bus47a09)**

Kristi Blazer, Representing herself, handed in written testimony as well as some proposed amendments. **EXHIBIT(bus47a10)**

JACK WELLS, SENATOR FROM BOZEMAN, said he supports the bill.

Dr. George Olson, Montana State Dental Board, handed in his written testimony and other exhibits to support his testimony.
EXHIBIT(bus47a11)

Lewis Smith, Board of Dentistry, handed in his written testimony as well as exhibits to support his testimony. **EXHIBIT(bus47a12)**

Sheldon Ivers, Board of Dentistry, said he supports this bill.

Opponents' Testimony:

Lee Wiser, Representing himself, said he is not an opponent to the bill, but he is opposed to the amendments.

Jonathan Mott, Representing himself, said he is not opposed to the bill, but is opposed to the amendment proposed by Dr. Olson.

Questions from Committee Members and Responses:

SENATOR BUTCHER asked about the education necessary to become a denturist.

Lee Wiser said the education has become more stringent over the past 16 years.

SENATOR COCCHIARELLA asked about the presiding officers in hearings.

Steve Meloy said it was really an oversight, but he had some proposed amendments to take care of the oversight. **EXHIBIT (bus47a13)**

SENATOR ROUSH asked for an analysis of the amendments proposed by the Board of Realtors.

Steve Meloy said they involve administrative processes and that it is an attempt to micro manage this situation. He said it should be left up to the division and the Governor.

Closing by Sponsor:

{Tape : 3; Side : A; Approx. Time Counter : 7.7}

REPRESENTATIVE JOE MCKENNY, HD 49, GREAT FALLS, said this is an important bill and it was meant to be a housekeeping bill.

EXECUTIVE ACTION ON HB 234

Motion/Vote: **SEN. SPRAGUE** moved that **HB 234 BE CONCURRED IN**.
Motion carried unanimously.

EXECUTIVE ACTION ON HB 138

DATE 3-1-2001

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MONTANA DEPARTMENT OF COMMERCE

Professional and Occupational Licensing Division

301 South Park PO Box 200513
Helena, MT 59620-0513

Phone: (406) 841-2300
FAX: (406) 841-2305
TDD: (406) 444-2978

HOUSE LABOR & EMPLOYMENT
SENATE NO. 5
DATE 3-1-2001
BILL NO. HB 120

March 1, 2001

To: Senate Business and Labor Committee

From: Steve Meloy, Administrator

RE: HB 120 GENERALLY REVISE PROFESSIONAL LICENSING LAWS

This is a combined housekeeping bill submitted on behalf of the boards and Department. I ask for your support in passing this bill.

The following provides a general explanation of each section. I will briefly explain the majority of changes. I also have in attendance, staff from the division who would be happy to answer any questions of the committee.

Section 1, page 2, Alternative Health Care (eliminating term limit): Both of the professions regulated by this Board have a small number of licensees (midwives 16, naturopaths 36). Many licensees do not meet the qualifications for Board appointment (i.e., experience requirement or disciplinary status) and/or do not want to serve. Removing this provision will allow qualified individuals to continue on the Board if other appointees are not available.

Section 2, page 3, Psychologists (allocation for administrative purposes): To ensure uniformity of administratively attached language.

Section 3, page 3 and Section 36, page 24 Real Estate Appraisers (increase board composition from five to seven and eliminates out-dated requirements for board members and providing temporary practice permits): Section 3 was amended by the House Business and Labor Committee to increase the board composition from five members to seven. The original bill removes out-dated language regarding board member composition that expired January 1, 1992. Section 36 adds the issuance of a temporary practice permit to out-of-state real estate appraisers to allow the Board of Real Estate Appraisers to function in a fully compliant capacity with the provisions of USPAP and with the request of the Appraisal Subcommittee while at the same time protecting the public by requiring appraisers who qualify to meet certain standards.

Section 4, page 4, Section 45, page 26, Section 46, page 27, Section 47, page 29, Section 48, page 29, Section 49, page 30, Section 50, page 30, Section 51, page 31, Section 52, page 31, Section 53, page 33, Section 54, page 33, Section 55, page 33, Section 56, page 34, Section 57, page 35, Section 58, page 36, Section 59, page 36, Section 60, page 37, Section 61, page 38, Section 62, page 39, Section 63, page 40, Section 64, page 40, Section 65, page 40, Section 66, page 41, Section 67, page 41, Section 68, page 42 Professional Engineers and Land Surveyors (substituting licensure for registration, gender neutral and allowing sole proprietorships for firms): To update and standardize titles and gender neutral language that reflect the professions of engineering and land surveying throughout the nation. The additional language will clarify vague areas of statutory language regarding the practice of engineering and land surveying. The addition of sole proprietorship will allow "one-owner" firms to be authorized to practice.

Section 10, page 7 Medical Examiners, Section 14, page 10 Nursing, Section 29, page 17, Outfitters, Section 32, page 21, Realty Regulation (eliminating executive director/secretary qualifications): The purpose of eliminating the requirements is to allow the boards to set by rule what they expect the qualifications of the executive director/secretary should be. This will allow greater flexibility in the recruitment and selection of these positions.

Section 12, page 8 Dentistry (clarifying supervision requirements for dental auxiliary personnel): The language "employing the personnel" is no longer needed.

Section 15, page 10 Nursing (clarifying renewal periods for nurse licenses): Removing the language "during the year" to allow for biennial renewals if the Board chooses.

Section 20, page 13 Hearing Aid Dispensers (changing medical evaluation requirements regarding the dispensing of hearing aids): The House Business and Labor Committee amended the bill to better clarify for the general public language regarding the Bill of Sale. The word "benefit" is too ambiguous and needs more clarification with regard to the Bill of Sale.

Section 22, page 14 Psychologists (revising calculation of late fees): To allow the Board to levy a more substantial late fee against licensees who renew their licenses late.

Section 27, page 16 Respiratory Care Practitioners (presiding officer appointment): To remove a conflict in state law concerning the appointment of the president of the board. This recommendation is from the Legislative Auditors.

Section 28, page 16 Barbers (eliminating singeing from practice of barbering and removing gender reference): The repeal is necessary to allow in the law what is already taking place. The current law limits the barbers to practicing certain services,

such as shampooing, highlighting and bleaching on male persons only. Additionally, we would like the wording singeing repealed since this is not the practice of barbering. This is a housekeeping issue for barbers.

Section 31, page 17 Realty Regulation, Section 33, page 21, Section 34, page 23, and Section 35, page 23 (eliminating broker associate and broker owner designations): The qualifications for a broker license are established by law. The difference between a broker owner and a broker associate is the broker owner owns the real estate firm and a broker associate works in the firm. The qualifications are the same for each license type. Type of structure is no longer appropriate for today's industry and should be eliminated.

Section 38, page 24, Section 39, page 25, Section 40, page 25, Section 41, page 26, Section 42, page 26 Architects (generally revising statutes and providing for license verification): To update language for organization, meetings and records of the board; to conform with current policies and procedures for national examinations and issuance of licenses; to comply with national examination requirements; and to modify requirements for the architect seal to keep abreast of the professional changes occurring in the electronic age.

Section 43, page 26, Section 44, page 26, Section 72, page 44 Landscape Architects (changing requirements for landscape architects): The House Business and Labor amended the original bill to allow for a delayed effective date of September 30, 2005. The Board would like to become uniform with the National standards for licensure as a landscape architect. Most states are requiring education and experience for licensing. By not requiring the same standards for licensing, the Board is impeding potential and current licensees from reciprocity with other states

Section 13, page 9 Medical Examiners and Nursing (eliminating the medical doctor representation on the prescriptive authority committee): The Board of Medical Examiners no longer deems it necessary to participate in the rule-making and decision processes for prescriptive authority and the amendment will expedite the process of granting prescriptive privileges to advanced practice registered nurses.

Over time, the Prescriptive Authority Committee has demonstrated that it is not necessary for the Board of Medical Examiners it to participate in the prescriptive authority processes. As a consequence, the Board of Nursing inquired of the Board of Medical Examiners if it still wished to participate in the process. The answer was no. This section is designed to comply with the wish of the Board of Medical Examiners.

Division – Quorums (providing a general definition of quorum and eliminating individual board definitions)

Section 3, page 3 (Real Estate Appraisers)

Section 5, page 5 (Athletics)

Section 6, page 5 (Model Act)

Section 9, page 7 (Medical Examiners)
Section 11, page 8 (Dentistry)
Section 13, page 9 (Nursing)
Section 16, page 11 (Chiropractors)
Section 17, page 12 (Radiologic Technologists)
Section 18, page 12 (Speech Language)
Section 19, page 13 (Hearing Aid Dispensers)
Section 21, page 14 (Psychologists)
Section 23, page 15 (Veterinarians)
Section 24, page 15 (Funeral Service)
Section 25, page 15 (Occupational Therapists)
Section 26, page 15 (Alternative Health Care)
Section 30, page 17 (Public Accountants)
Section 37, page 24 (Private Security)
Section 49, page 30 (Professional Engineers)
Section 69, page 43 (Electrical)
Section 70, page 43 (Plumbers)

This statutory change would alleviate all potential conflicts of quorums because legislatively created board numbers exacerbate the problem. In many cases, regulatory Boards are required to have a quorum in order to conduct Board business. A quorum is defined as a "majority of an entire body". Because of the statutory requirement of having Adjudication Panels and Screening Panels for disciplinary matters and since either of these panels would be conducting board business by meeting, it is an impossibility that the statute requiring a quorum can be met. For that reason we are recommending the wording be changed for all boards to say "A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business". This will allow the Boards to continue to function in all matters.

Section 7, page 6 Division - Mental Intent (mental intent not a prerequisite to unprofessional conduct): Frequently, hearing officers at the administrative level cite that a licensee did not violate a statute or rule because they did not have the mental intent. The Department's statutes do not say specifically that the violations for unprofessional conduct require a mental intent and they remain silent on absolute liability.

Each Board serves a quasi-judicial role in disciplining licensees for unprofessional conduct. The grounds for unprofessional conduct are set out in statute and rule.

The Department's statutes do not require evidence of any particular mental state or intent on the part of a licensee to prove that the individual has committed unprofessional conduct by violating a statute or rule governing the profession. The licensee's mental state is not relevant to whether unprofessional conduct occurred because license discipline actions are not criminal actions.

Frequently, hearing officers at the administrative level will find that a licensee did not commit unprofessional conduct because that individual did not have a specific intent to violate a statute or rule. By adding this section, the Department statutes would be clear that no particular mental state or intent is required to commit unprofessional conduct.

Section 8, page 6, Section 72, page 44 Medical Examiners (eliminating exemption from licensing requirements for commissioned medical officers of the armed forces and repeal waiver of license fees): The existing licensing exemption for commissioned medical officers is in direct conflict with federal legislation passed in the National Defense Authorization Act for fiscal year 1999, which amended 10 U.S.C. 1094 to require that military physicians have an unrestricted medical license by October 1, 1999.

The United States Department of Defense ("DOD") has requested elimination of the exemption from payment of licensing and renewal fees by those medical officers who are members of the armed forces and are licensed in the state of Montana. The DOD has interpreted 10 U.S.C. 1094, as amended, to require that military physicians possess full and unrestricted medical licenses (meaning exactly the same license as possessed by non-military physicians) in at least one state by October 1999.

In a memo dated May 14, 1999 from Brigadier General Kevin C. Kiley, he stated: "a military physician's medical license must meet all clinical and administrative requirements and be no different than his/her civilian counterpart's license. Renewal fees are not subject to waiver." Thus, the DOD has taken the position that Montana's statutory exemption creates a category of license which is not exactly the same as a license held by a non-military physician, and thus does not constitute full and unrestricted licensure.

This change will affect between 100-150 licensees, out of approximately 70,500 current licensees.

Section 72, page 44 Medical Examiners (repealing requirement for physicians to report habitual users or drug addicts): The board's position is that the existing law is outdated, that the reasons for enactment of the law are no longer valid, that the law, as presently written, violates the physician-patient privilege and may also violate confidentiality provisions contained in other laws

Pursuant to an Attorney General Opinion, the Board is requesting the repeal of 37-2-211, requiring a physician to report a patient believed to be a "habitual drug user" or "drug addict" (including anyone who needs an opioid analgesic for 30 consecutive days) to the county attorney within 48 hours. It also requires the physician to register patients who are prescribed narcotics for 30 days with the county attorney.

The statute, adopted in 1921, does not reflect the current trends and policies for long-term pain management by physicians in this state. The stigmas once attached to the long-term use of narcotics for pain has changed dramatically over the past five to ten

years. The number of prior Board actions disciplining physicians for "over-prescribing" of narcotics has diminished. Instead, state boards have promulgated statements and guidelines to reverse the trend of under-treatment of intractable pain and to facilitate more appropriate use of controlled substances by duly licensed practitioners with prescriptive authority. In the Montana Board's statement adopted on March 15, 1996, the Board expressed that: "a number of factors continue to interfere with effective pain management. these include fear of legal consequences when controlled substances are used and the low priority of proper pain management in our health care system."

It is the Medical Board's position that legal consequences (possibly stemming from the duty to report to the county attorney) should not interfere with a physician's long-term pain management plans. Such plans should integrate current knowledge concerning pain management into the physician's clinical practice, be subject to the physician-patient privilege, and be free from any legally mandated reporting requirements.

Thank you for your positive consideration of this bill. We would be happy to answer any questions.

TESTIMONY IN SUPPORT OF AMENDMENT TO HOUSE BILL NO. 120

OFFERED BY LEWIS K. SMITH

LEGAL COUNSEL

TO THE PROFESSIONAL AND OCCUPATIONAL LICENSING BUREAU

SENATE LABOR & EMPLOYMENT
L.R. 6
DATE 3-1-2001
BILL NO. HB 120

The Board of Nursing (the "Board") seeks to offer an amendment to this bill to remove from the Nursing Act the requirement in the Nurses scope of practice that nursing services are only those which are performed for compensation, for the following reasons.

The existing statute provides that a nurse or person performing nursing functions, either practical or professional, must be providing those services for compensation before the Nursing Act and its standards, enforcement and disciplinary portions will apply. We believe that the public expects that anyone who holds themselves out to be a nurse and is carrying out the functions of a nurse should have the requisite licensure, with its accompanying education, training and testing, whether or not the person is compensated for the services. This matter has proven a problem in enforcing the unlicensed practice of nursing as well as in disciplining nurses were they were not compensated for their services.

The change to the bill would be to Insert a section 13, amending MCA 37-8-101 and 102. In Section 37-8-101, the words relating to compensation for personal gain being required will be deleted. In section 37-8-102, subsection 5 (a) and (b), the words "for compensation" will be deleted.

The Montana Nursing Association supports this change and has or will provide testimony in support. For the foregoing reasons, the Board of Nursing offers this amendment to the bill at this time as written on the accompanying attachment.

We acknowledge that this language was proposed in SB 200, but that bill was tabled in committee, however we feel the bill is extremely important to protecting the public from improper nursing practice in Montana.

Amendments to House Bill No. 120
Senate 1st Reading Copy

For the Senate Business and Labor Committee

Prepared by Beverly Marlow
for the Department of Commerce
February 28, 2001

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 7
DATE 3-1-2001
BILL NO. HB 120

1. Page 9, line 1.

Insert: "Section 13. Section 37-8-101 is amended to read:

37-8-101. Purpose. (1) In order to safeguard life and health, any person practicing or offering to practice professional nursing in this state ~~for compensation or personal gain shall be required to~~ shall submit evidence that ~~he or she~~ the person is qualified to practice and ~~shall~~ must be licensed as hereinafter provided in this chapter.

(2) In order to safeguard life and health, any person practicing or offering to practice practical nursing in this state ~~for compensation or personal gain shall be required to~~ shall submit evidence that ~~he or she~~ the person is qualified to practice and ~~shall~~ must be licensed as hereinafter provided in this chapter.

Section 14. Section 37-8-102 is amended to read:

37-8-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advanced practice registered nurse" means a registered professional nurse who has completed educational requirements related to the nurse's specific practice role, in addition to basic nursing education, as specified by the board pursuant to 37-8-202(5)(a).

(2) "Board" means the board of nursing provided for in 2-15-1844.

(3) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(4) "Nursing education program" means any board-approved school that prepares graduates for initial licensure under this chapter. Nursing education programs for:

(a) professional nursing may be a department, school, division, or other administrative unit in a senior or junior college or university;

(b) practical nursing may be a department, school, division, or other administrative unit in a vocational-technical institution or junior college.

(5) "Practice of nursing" embraces two classes of nursing service and activity, as follows:

(a) "Practice of practical nursing" means the performance ~~for compensation~~ of services requiring basic knowledge of the biological, physical, behavioral,

psychological, and sociological sciences and of nursing procedures. Practical nursing practice uses standardized procedures in the observation and care of the ill, injured, and infirm; in the maintenance of health; in action to safeguard life and health; and in the administration of medications and treatments prescribed by a physician, advanced practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services may include a charge-nurse capacity in a long-term care facility that provides skilled nursing care or intermediate nursing care, as defined in 50-5-101, under the general supervision of a registered nurse.

(b) "Practice of professional nursing" means the performance ~~for compensation~~ of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health; the prevention, casefinding, and management of illness, injury, or infirmity; and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (5)(b):

(i) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

(ii) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals.

NEW SECTION. **Section 15. Saving clause.** The amendments provided in [Sections 13 and 14] do not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before October 1, 2001.

Renumber: subsequent sections.

-END-

HB 120

DEACNESS BILLINGS CLINIC
March 1, 2001 Testimony
Senate Business and Labor Committee
HB 120

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 8
DATE 3-1-2001
BILL NO. HB120

Deaconess Billings Clinic, on behalf of our patients and physicians potentially harmed by this law, supports repeal of MCA 37-2-111. This is an outdated law, initially adopted in 1921. It has never been enforced or used in the state of Montana. The Attorney General's office recently advised the State Board of Medical Examiners that the law was probably enforceable, although "nonsensical," and went on to say, "While I am unable to relieve you from the burden of complying with this antiquated statute, I suggest that you approach the 2001 legislature with a proposal to repeal § 37-2-111."

On its face, MCA 37-2-111 requires a physician to "report" a patient he believes to be an "habitual user of drugs" or "drug addict" to the county attorney within 48 hours. It requires a physician to "register" patients prescribed narcotics for 30 days with the county attorney. And it requires the county attorney to "immediately file a complaint" against that person. The definition of "habitual user of drugs" or "drug addict" includes anyone who needs an opiod analgesic for 30 consecutive days, even if the patient has a legitimate medical need for chronic pain relief. The law imposes criminal penalties, including monetary penalties and imprisonment, upon physicians who violate the reporting obligations.

Deaconess Billings Clinic, in support of the State Board of Medical Examiners' carefully considered position on this issue, is concerned that MCA 37-2-111 may stand in the way of effective pain management by physicians in this State. The State Board of Medical Examiner's concern is reflected in an initiative by the Federation of State Medical Boards, the World Health Organization, the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO), and many physician professional societies to encourage physicians to more aggressively treat pain by the use of opiod analgesics, when that is medically appropriate.

The Federation of State Medical Boards begins its "Model Guidelines for the Use of Controlled Substances for the Treatment of Pain" by addressing the patients most harmed by inadequate pain medication:

Pain often is inadequately treated in a wide range of patient groups, including trauma and surgery patients, patients with cancer, those who are dying, as well as those who are living with a variety of chronic painful conditions. In addition to the direct effects of pain on health and quality of life, unrelieved pain may result in unscheduled hospital admissions; excessive use of emergency rooms, loss of employment, spouse, and family; and loss of life itself when some chronic pain patients commit suicide.

The State Board of Medical Examiners concern is well reflected in a recent chilling disciplinary matter in Oregon, where a physician allowed nursing home patients to suffer from unrelieved pain, often while they were dying, because of unwillingness to prescribe sufficient opiod analgesics. Fortunately, the Oregon State Board disciplined this physician for unprofessional conduct. We don't want patients to suffer in this way in Montana, and we certainly don't want that to happen because physicians are worried about having to report patients as "drug addicts" or "habitual users of drugs" to county attorneys under a "nonsensical" law.

The use of opiod analgesics for the treatment of pain must be distinguished from treatment of drug addiction itself. Physicians are already prevented, by federal law, from prescribing opiod analgesics to treat drug addiction. Repeal of MCA 37-2-111 will not, therefore, in any way allow physicians to prescribe opiod analgesics to addicts, who have no legitimate medical reason for receiving the drug.

Today, the standard of care for physicians often requires them to treat patients with chronic pain with opiod analgesics for more than 30 consecutive days. The Montana State Board of Medical Examiners has established guidelines for physicians who are appropriately treating pain with opiod analgesics. It is recommending repeal of MCA 37-2-111 because it stands as a potential barrier to the standard of care for the treatment of pain.

Deaconess Billings Clinic urges your support for repeal of MCA 37-2-111, on behalf of patients who require opiod analgesics to deal with chronic pain, and on behalf of the physicians who may be deterred from prescribing needed pain medication because doing so makes them potentially subject to criminal penalties for failing to report patients to the county attorney. We look forward to your support of repeal.

Kathy Kenyon, Legal Counsel DBC
Jani McCall, Lobbyist DBC



MONTANA COUNTY ATTORNEYS ASSOCIATION

PO Box 201439

Helena, Montana 59620-1439

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 9

DATE 3-1-2001

BILL NO. HB 120

January 10, 2001

Chairman
Business and Labor Committee

RE: HB 120

Dear Sir:

I am writing to support the repeal of Section 37-2-111 contained in HB120. The statute is antiquated, and as noted by the Attorney General, is probably unenforceable. To my knowledge, no one has ever been prosecuted under Section 37-2-111.

While the statute may have met some legitimate need when it was adopted in 1921, the law is now contrary to accepted medical practices for pain management. I believe that it is inappropriate to require physicians to report patients who need long term pain medication to the county attorney. It is even more inappropriate to require that the county attorney prosecute a physician who is simply attempting to practice his profession in a compassionate and competent manner.

As president of the Montana County Attorneys Association, I urge the committee to repeal Section 37-2-111 MCA, as provided in HB120.

Sincerely,

Christopher G. Miller, president
Montana County Attorneys Association

LUXAN & MURFITT

PROFESSIONAL LIMITED LIABILITY PARTNERSHIP
ATTORNEYS AT LAW

MONTANA CLUB BUILDING • 24 W. SIXTH AVE.
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HOUSE LABOR & EMPLOYMENT

EXHIBIT NO. 10

DATE 3-1-2001

BILL NO. H 8120

GARY L. DAVIS
DALE E. REAGOR
PATRICK E. MELBY
KRISTI BLAZER
CANDACE TORGERSOY PAYNE
GREGORY G. GOULD
JAMES B. LIPPERT

WALTER S. MURFITT OF COUNSEL
H.J. LUXAN (1918-1984)

BEFORE THE SENATE BUSINESS AND LABOR COMMITTEE

Testimony Regarding HB 120

March 1, 2001

I am an attorney from Helena, Montana. I frequently represent professional individuals who are licensed by the boards that are established and governed by the laws which are the subject of HB 120. I am not a paid lobbyist, but rather I am commenting on my own behalf because I have serious concerns about the fairness of the license discipline process.

Although I represent a number of licensees and have raised many of these issues in cases before the licensing boards, I was not informed that this bill was being drafted or invited to provide suggestions or comments. It was not until after this bill was introduced that I learned of its existence and then appeared to testify before the House committee.

After I testified before the House Business and Labor Committee regarding this bill, I did speak with Rep. McKenney and with Mr. Meloy regarding my concerns. However, most of my suggestions were rejected. I am here because I do not believe that the amendments made in the House are adequate to address the serious concerns I have regarding the basis fairness of the license discipline process.

Inadequate Screening Process

The licensing boards established under these laws are given an incredible amount of power and discretion. In many instances, these boards and their members may exercise that discretion wisely and fairly. Citizens board members provide service on these boards in an effort to improve the practice of the various professions regulated. However, there are serious problems with the manner in which some of these Boards and their members exercise their powers.

The law requires that before a formal disciplinary proceeding can be started, the Boards must screen complaints to determine that there is reasonable cause to believe that a violation of standards has occurred that justifies disciplinary proceedings. One of the most serious problems is that no fair or effective screening is done.

Screening panels of the Boards often do not even identify what the standard or rule is against which the licensee's conduct is to be measured. Despite the fact that the standards often require substantial or extensive interpretation, the screening panels

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routinely fail to even discuss what is required or prohibited by the applicable standard. Yet, they nonetheless routinely authorize commencement of formal disciplinary actions without consideration of the controlling standard. It can take months, years and tens of thousands of dollars in legal costs to find out what the standard is that controls, or sometimes to find out that there is no standard at all.

Sections 37-1-307 and 37-1-309, MCA should be amended to require that the Boards determine whether a particular violation may have occurred, and to identify the specific standard or rule under which the licensee is to be charged. This is a matter of basic fairness. The Boards should not be permitted to make up the rules as they go along. I have attached to my written testimony proposed bill amendments that would address this issue.

The Quorum Issue

Another problem, at least with some Boards, is their abuse of the statutory quorum requirements. In particular, this has been a problem with the Board of Real Estate Appraisers. This Board has routinely and as a matter of policy and practice ignored the statutory three-member quorum requirement, conducting business such as screening of complaints with only two members.

Under current law, a board may establish a screening panel to determine whether there is reasonable cause to believe a licensee has violated a statute or rule justifying disciplinary proceedings. Mont. Code Ann. § 37-1-307(1)(e). The law does not establish any requirements regarding the number of Board members that must be included on any screening panel.

The Board currently uses a two-member panel to screen cases, in violation of the current three-member quorum requirement. This means that only two individuals make the screening determination. One determined and assertive Board member on the screening panel can push through a "finding" of reasonable cause, initiating a disciplinary prosecution. Such a prosecution, regardless of merit or eventual outcome, is extremely expensive to defend and damaging to the appraiser's business and reputation. This has been a particularly troublesome practice in light of the apparent willingness of the Board of Real Estate Appraisers to allow itself to be used by appraisers as a competitive weapon against other appraisers.

Section 3 of the bill would eliminate the current three-member quorum requirement for the Board of Real Estate Appraisers. Section 6 would establish the following general quorum requirement for all licensing boards:

A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.

This proposed language would legalize the Board of Real Estate Appraiser's current practice of screening cases with a two-member screening panel, because it would require a mere majority of the panel, rather than a majority of the Board, to conduct Board business.

This proposed quorum provision concentrates far too much power in the hands of only one or two individuals to make screening decisions that will have very significant adverse impacts upon licensees. The power to initiate disciplinary prosecutions should be spread among more Board members, as a check to assure greater consensus regarding prosecution and to discourage abuse of the Board's screening function.

The bill was amended in the House to propose increasing from five to seven the number of members on the Board of Real Estate Appraisers, but this is the only measure proposed in the current bill to address the problems that have occurred with this Board. Increasing the number of Board members may provide the Board with some opportunity to improve its practices, but there is absolutely nothing in the bill to assure that the Board actually makes any change whatsoever in the way it has been doing business. In fact, with the proposed amendment that allows a mere majority of a panel to conduct business, this bill as written actually *increases* the opportunity for abuse.

The bill should be amended to require a screening panel of *at least* three members and concurrence of at least two screening panel members to initiate a prosecution. I have attached to my written testimony proposed bill amendments that would address this issue.

Abuse of the Complaint Process

Another serious problem is the filing of complaints and the use of the complaint and disciplinary problem by competitors to gain a competitive advantage. The fact that members of the professions regulated serve on the Boards unfortunately makes the Boards more susceptible to such misuse in some cases. Yet there is a lack of adequate accountability for persons who abuse the complaint process by filing frivolous or competitively motivated complaints. Many of the complaints filed before the Board of Real Estate Appraisers are filed not by clients or others who have been harmed by some lack of professional conduct, but rather by competitors who stand to gain by miring the licensee in a disciplinary proceeding and tarnishing their reputation with the taint of discipline.

Section 37-1-308 should be amended to require a person who files a frivolous complaint to pay the costs of the Board and the licensee in processing and defending the complaint. There also needs to be more accountability for Board members who use or abuse their position for such improper purposes. The neutrality of Board members is critical, and Board members should be strictly prohibited from filing complaints with the Board upon which they serve. I have attached to my written testimony proposed bill amendments that would address this issue.

Summary

HB 120 should be amended to clearly require that specific screening determinations must be made before prosecution may be initiated, i.e., a finding must be made specifying the particular statute, rule or standard that may have been violated and providing that prosecutions are limited to those alleged violations. Further, HB 120 threatens to legitimize the current abusive practices of the Board of Real Estate Appraisers, and should be amended to eliminate rather than to perpetuate the inappropriate concentration of power among only one or two Board members. In addition, the bill should be amended to establish accountability for persons who abuse the complaint process, such as by filing meritless complaints or by filing complaints for the purpose of harming competitors.

I thank you for your attention to these concerns of your constituents. I would be glad to provide any additional information or answer any questions you may have.

Sincerely,

GREGORY G. GOULD

for LUXAN & MURFITT, PLLP

Amendments to House Bill 120
Second Reading
(As passed by the House of Representatives)

March 1, 2001

1. Add a new section to the bill:

Section __. Section 37-1-307, MCA is amended to read:

37-1-307. Board authority. (1) A board may:

(a) hold hearings as provided in this part;

(b) issue subpoenas and administer oaths in connection with investigations and disciplinary proceedings under this part. Subpoenas must be relevant to the complaint, issued by a majority vote of board members not serving on the screening panel described in subsection (1)(e), and signed by the presiding officer of the board. Subpoenas may be enforced as provided in 2-4-104;

(c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under this part;

(d) compel attendance of witnesses and the production of documents. Subpoenas may be enforced as provided in 2-4-104;

(e) establish a screening panel that determines whether there is reasonable cause to believe that a licensee has violated a particular statute, or rule or standard justifying disciplinary proceedings. A screening panel must specify in writing each particular statute, rule or standard of which it determines there is reasonable cause to believe a violation occurred. The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening panel for the case;

(f) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chapter.

(2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information regarding its licensees and license applicants and regarding possible unlicensed practice.

[(3) Each board shall require a license applicant to provide the applicant's social security number as a part of the application. Each board shall keep the social security number from this source confidential, except that a board may provide the number to the department of public health and human services for use in administering Title IV-D of the Social Security Act.] (Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)

2. Add a new section to the bill:

Section __. Section 37-1-309, MCA is amended to read:

37-1-309. Notice – request for hearing. (1) If a reasonable cause determination is made pursuant to 37-1-307 that a particular violation of this part has occurred, a notice must be prepared by department legal staff and served on the alleged violator. The notice may be served by certified mail to the current address on file with the board or by other means authorized by the Montana Rules of Civil Procedure. The notice may not allege violation of any statute, rule or standard unless the board's screening panel has made a written determination that there is reasonable cause to believe the particular statute, rule or standard has been violated.

(2) A licensee or license applicant shall give the board the licensee's or applicant's current address and any change of address within 30 days of the change.

(3) The notice must state that the licensee or license applicant may request a hearing to contest the charge or charges. A request for a hearing must be in writing and received in the offices of the department within 20 days after the licensee's receipt of the notice. Failure to request a hearing constitutes a default on the charge or charges, and the board may enter a decision on the basis of the facts available to it.

3. Section 3 is amended as follows:

Page 3, line 21, following subsection (3), insert:

(4) A screening panel of the board established pursuant to 37-1-307 must be comprised of at least three members of the board, including one public representative who is not engaged in the occupation of real estate appraisal. At least two members of the screening panel must concur in any determination that there is reasonable cause to believe that a licensee has violated a statute or rule justifying disciplinary proceedings.

Renumber subsequent subsections.

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4. Add a new section to the bill:

Section __. Section 37-1-308, MCA is amended to read:

37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -- exceptions. (1) Except as provided in subsection ~~(3)~~(4) or (5), a person, government, or private entity may submit a written complaint to the department charging a licensee or license applicant with a violation of this part and specifying the grounds for the complaint.

(2) If the department receives a written complaint or otherwise obtains information that a licensee or license applicant may have committed a violation of this part, the department may, with the concurrence of a member of the screening panel established in 37-1-307, investigate to determine whether there is reasonable cause to believe that the licensee or license applicant has committed the violation.

(3) A person or private entity, but not a government entity, filing a complaint under this section in good faith and with a reasonable basis for each allegation in the complaint is immune from suit in a civil action related to the filing or contents of the complaint. A person or entity that files a complaint in bad faith or without a reasonable basis for any one or more allegations contained in the complaint is liable to the department and the Board for their respective costs incurred in processing or defending the complaint or the portion of the complaint lacking a reasonable basis. In an action for damages by a licensee against a complainant regarding a complaint filed in bad faith or without a reasonable basis, the licensee shall be entitled to recover the reasonable attorney fees and expenses incurred in defending against the complaint, in addition to any other damages as may be provided by law.

~~(3)~~(4) A person under legal custody of a county detention center or incarcerated under legal custody of the department of corrections may not file a complaint under subsection (1) against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while detained or confined in a county detention center or incarcerated under legal custody of the department of corrections unless the complaint is first reviewed by a correctional health care review team provided for in 37-1-331.

(5) A Board member may not file a complaint with the Board upon which the member serves, or otherwise act in concert with a complainant in developing, authoring or initiating a complaint to be filed with the Board.

- end -



Cosmetic & Restorative Dentistry

GEORGE M. OLSEN, DDS

February 26, 2001

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 11

DATE 3-1-2001

BILL NO. HB 120

TO: Members of the Senate Business & Labor Committee

FROM: George M. Olsen, DDS – President of MT State Board of Dentistry

RE: Amendment to House Bill 120

The members of the Montana Board of Dentistry are charged with the responsibility of protecting the public of Montana in regards to dentistry.

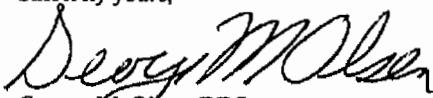
Some denturists in Montana are utilizing and advertising using the designation DDM (Doctor of Medical Dentury) after their names. The Board feels this is a deliberate and deceptive form of representation and advertising. Historically the designation "LD", Licensed Denturist, is the common designation used to note the dentury occupation.

Other states that license denturist have already taken a position that the use of the DDM designation is improper in their states.

The Board of Dentistry, through their legal counsel, issued, on February 15, 2000, a letter to all denturists licensed in the state that the use of a DDM designation would have the potential of subjecting themselves to disciplinary action by the Board of Dentistry.

The Board feels there will be irreparable harm if this deception is allowed to continue and thus wants to amend the designation of denturists.

Sincerely yours,


George M. Olsen, DDS

Enc:

1. Yellow page from Kalispell phone directory
2. Yellow page from Billings phone directory
3. Letter of February 15, 2000 from Ed Myers, Department of Commerce, sent to all state denturists
4. Letter of January 15, 2001 from six currently licensed Montana denturists
5. Letter of January 4, 2001 from the state of Oregon
6. List of states that have reviewed the DDM designation
7. House Bill 120 Amendment



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FAX: (406) 444-16
TDD: (406) 444-29

MONTANA BOARD OF DENTISTRY
DEPARTMENT OF COMMERCE
HELENA, MONTANA

February 15, 2000

By Certified Mail:

Recently, the Montana Board of Dentistry (Board) has become aware that a small number of the Denturists licensed by the Board may have begun utilizing and advertizing with the designation D.D.M. (Doctor of Medical Denturity). Section 37-4-102(j), MCA provides the following:

uses the words "dentist", "dental surgeon", or "oral surgeon", the letters "D.D.S.", "D.M.D.", or any other words, letters, title, or descriptive matter that in any way represents the person as being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures. . . .

Section 37-29-301 (2), MCA provides that a licensed dentist may "use in connection with the person's name the word or letters "denturist", "L.D.", or any other words, letters, abbreviations or insignia implying that the person is engaged in the practice of denturity".

Historically and at present, the Board has only used the designation for Licensed Denturists as "L.D." on their licenses and wall hangers. Given the limited educational background in obtaining a D.D.M. and the fact that the institution that confers the degree has not been recognized by the Board of Regents, the Board considers using the D.D.M. designation and

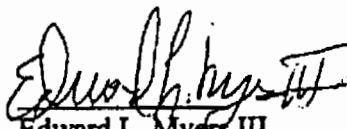
Page 1 of 2

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those holding themselves out as Doctors to the public as extremely misleading considering the limited scope of practice allowed by state law. The term "Doctor" in the health care profession implies to the public that a person may diagnose, treat conditions various medical conditions, or prescribe medications when L.D.'s are prohibited from doing so by law.

Section 37-1-316(5), MCA defines unprofessional conduct as "a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation." As of the date of receipt of this letter, any Licensed Denturist who utilizes the designation D.D.M. and/or holds themselves out to the public as being a "doctor" has the potential of subjecting themselves to disciplinary action by the Board of Dentistry.

If you have any questions, please do not hesitate to call myself at 406-444-0610 or Board Administrator, Sharon McCullough at 406-444-3745.


Edward L. Myers III
Department of Commerce

Cc: Board File

January 15, 2001

Montana Dental Association
P.O.Box 1154
Helena, Mt. 59624

RECEIVED

JAN 18 2001

Montana Dent' Ass'n

To whom it may concern:

Subject:

The Doctorate of Dentistry Medicine degree being issued by Mills Grey University in Kalispell Montana, and those individuals who are now using the title D.D.M. (Doctor of Dentistry Medicine).

The following licensed Montana denturists have in no way been participants in the above-mentioned degree. We are not associated with that degree or with Mills Grey University, nor do we support the issuance or use of that degree.

We have no association with the group known as the D M A. (Dentistry Medicine Association).

We do support denturists rights to expand our education to the extent that we deem necessary to best serve the needs of our patients.

We do support denturists rights to practice under rules and regulations established by Initiative 97, passed in 1984, by the people of the State of Montana.

Sincerely:

Charles J. Conlan L.D.
Gold West Denture Center
1103 Missouri St.
Butte, Mt. 59047

Rob Carnahan L.D.
Western Montana Denture Center
715 Kinsington Ave. Suite 25B
Missoula, Mt. 59801

Kenneth MacPherson L.D.
Western Montana Denture Center
715 Kinsington Ave. Suite 25B
Missoula, Mt. 59801

Ronald Olson L.D.
West Park Denture Clinic
1460 17th St. W.
Billings, Mt. 59104

Grant Olson L.D.
West Park Denture Clinic
1460 17th St. W.
Billings, Mt. 59104

John Mateskon L.D.
Bozeman Denture Center
300 N. Willson Ave. Suite 501 E.
Bozeman, Mt. 59715

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Oregon

John A. Kitchener, M.D., Governor

Student Assistance Commission

Office of Degree Authorization

1500 Valley River Dr., Suite 100, Eugene, OR 97401

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RECEIVED Website: www.osac.state.or.us/oda

January 4, 2001

JAN 22 2001

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OREGON BOARD
OF DENTISTRY

It has come to our attention that you may be claiming a doctoral degree in dentistry from Mills Grae University of Montana. Many people are unaware that Oregon allows use of only two kinds of degrees, those from institutions accredited by an agency recognized by the U.S. Department of Education or the foreign equivalent of such accreditation, and those approved by ODA. Mills Grae University is unaccredited (except by an unrecognized entity) and is not ODA-approved.

As a consequence, a degree earned from Mills Grae University therefore cannot legally be used as a credential in Oregon. Also, use of the title "Dr." if based on such a degree is not legal in Oregon. We would like a letter from you stating that you will cease claiming a degree from Mills Grae University as a credential in Oregon. ODA does not take action against people who may have been unaware of the law and who voluntarily agree to cease using an invalid degree in Oregon.

The reason that Oregon does not recognize approval by other states without an ODA review is that many states have little or no quality control of colleges and universities based in their jurisdiction. Montana, where Mills Grae is located, has no state oversight of private colleges at all.

We look forward to hearing from you regarding this degree claim. We regret the necessity of communicating with you about this matter, but our statutory duty to ensure that college degrees remain meaningful in Oregon necessitates such contact.

Sincerely,

Alan L. Contreras
Administrator

cc: Jeff Svejcar, Executive Director, OSAC
Bruce Marks, Deputy Director, OSAC
Dave LaDuca, Board of Medical Examiners
Jo Ann L. Bones, Board of Dentistry
Susan K. Wilson, Health Licensing Office

Use of an invalid degree after receipt of this letter is a Class B Misdemeanor under ORS 348.992 and may render the user subject to civil action under the Unlawful Trade Practices Act. See ORS 348.609.

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STATES THAT LICENSE DENTURISTS

States that have reviewed the DDM designation/degree:

MAINE: Does not recognize the DDM designation/degree

WASHINGTON: Has not had any requests

PENNSYLVANIA: Has not had any requests

IDAHO: Cannot use Doctor of Dentistry

OREGON: Does not recognize the DDM designation/degree

ARIZONA: Has not had any requests

MONTANA:

Amendments to House Bill No. 120
3rd Reading Copy

For the Senate Business and Labor Committee
Prepared by Beverly Marlow at the request of
the Board of Dentistry
January 22, 2001

1. Page 1, line 19.
Following: "REGISTRATION"
Insert: "AMENDING THE DESIGNATION OF DENTURISTS;"

2. Page 2, line 2.
Following: "37-28-103"
Insert: "37-29-301,"

3. Page 16.
Following: line 7.
Insert: "Section 28. Section 37-29-301, MCA, is amended to read:
"37-29-301. License to practice required. (1) A person shall hold a license for the practice of denturistry in order to perform the following acts:
 - (1) (a) engaging or offering to engage in the practice of denturistry; or
 - (2) (b) use in connection with the person's name the word or letters "denturist", or "L.D." or ~~any other words, letters, abbreviations, or insignia implying that the person is engaged in the practice of denturistry.~~(2) Licensees shall only use the initials "L.D." to designate themselves as a denturist.
Renumber: subsequent sections.

-END-

TESTIMONY IN FAVOR OF BOARD OF DENTISTRY AMENDMENT

TO HOUSE BILL NO.

LEWIS K. SMITH

BOARD OF DENTISTRY LEGAL COUNSEL

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 12

DATE 3-1-2001

BILL NO. HB 120

We are requesting that the Committee amend the bill to modify Mont. Code Ann. §37-29-301, which currently permits denturists licensed by the Board of dentistry to use the initials L.D. or "any other words or initials which indicate the practice of dentistry." Most denturists in the United States and Canada use the initial's L.D. to designate their practice. However, recently some denturists are using the designation of DDM to reference their practices. These denturists claim to have received doctorate level degrees in dentistry.

The Montana Board of Dentistry and most of the Boards of other states which have considered the use of this designation have rejected the use of the designation. Despite the issuance by the Board of Dentistry of a cease and desist order issued to the denturists in Montana who use this designation, some denturists continue to use the DDM designation in advertising and identification of their practices. Enforcement of the Board's cease and desist order runs into the broad language in the statute, permitting the denturists to use whatever initials indicate the practice of dentistry. The amendment seeks to limit the use of initials to describe the practice of dentistry to the initial's L.D., as that is the only recognized credential at this time in the State of Montana.

As with all "simple" things, there is a lot going on behind our request. The Montana Board of Dentistry requires denturists to have either a minimum of two years of education from an accredited dentistry school and one year of internship, or that they have three years of licensed practice in another state. The educational requirement is met by attending at least two years of education at "an educational institution accredited by a national or regional accrediting agency recognized by the Montana state board of regents." MCA §37-29-303(1). The Montana Board of Regents presently recognizes educational training in dentistry from George Brown University and Northern Alberta College in Canada. These schools award a certificate in denturism after two to four years of college level education. In the United States there is a technical school in Washington which has a dentistry program, however, it has not been recognized by the Montana Board of Regents.

An Internet-based school in Kalispell, Mills Grae University, has recently started awarding doctorate level degrees to denturists as DDM or Doctor of Medical Dentistry degrees. That school has not been accredited by the Montana Board of Regents and the school's "national" accrediting body has not been recognized by the Montana Board of Regents. It also has not been recognized by any other state which has examined the issue and has not been recognized by the North West Association of Schools and Colleges which accredits schools for the Montana Board of Regents. Mills Grae web site advertises that it has issued 33 doctoral level degrees following "four - ten day sessions" to persons who have existing dentistry licenses.

The Montana Board of Dentistry has an obligation to protect the public from unlicensed and/or deceptive practice and to see that the people it licenses have the credentials and skills for the practice they claim. The legislature has previously determined at MCA §37-3-101 that the

persons licensed and authorized to diagnose and treat disorders of the mouth are dentists. The legislature also defined the scope of a denturist's practice MCA 37-29-102(6) as:

" (a) the making, fitting, constructing, altering, reproducing, or repairing of a denture and furnishing or supplying of a denture directly to a person or advising the use of a denture; or

(b) the taking or making or the giving of advice, assistance, or facilities respecting the taking or making of any impression, bite, cast, or design preparatory to or for the purpose of making, constructing, fitting, furnishing, supplying, altering, repairing, or reproducing a denture."

Dentists complete eight years of college level course work to become a dentist. During that time they are schooled for four years specifically on all phases of diagnoses and treatment of disorders of the mouth, including considerable clinical training. They also test with both national and regional written and clinical exams to demonstrate their proficiency at the skills they profess to possess. Denturists are currently tested for the State of Montana by contract with George Brown College in Canada to demonstrate written and clinical proficiency, as provided within the current denturists scope of practice.

The Board of Dentistry is concerned that the use of the designation Doctor of Medical Dentistry, DDM, implies to the public that the person has a doctorate level degree recognized by the State of Montana, and that they have certain levels of proficiency. Medical doctors, dentists, lawyers, psychiatrists, psychologists and optometrists in Montana who deal with the public under a doctoral designation must have attended accredited schools recognized by the State Board of Regents and take a state approved or administered exam in order to practice. The persons using the designation of DDM as Denturists have not attended a school accredited and recognized by the Montana Board of Regents. Their scope of practice does not recognize some of the claims some of them are making regarding ability to practice dentistry (i.e. Claim in Flathead Interlake re: Medical Denturists specializing "in the diagnosis and treatment of disorders associated with the loss of teeth, including removable prosthetic appliances and a variety of health problems associated with the loss of teeth.")).

The Board of Dentistry seeks this amendment to enforce its cease and desist order against those denturists who claim to possess doctoral degrees in dentistry. Their school has not been recognized by the Montana Board of Regents or any other state as a proper credential to obtain and use a doctorate level degree in dentistry. The very broad language in the statute allows a fraud to be perpetrated on the public as such a level of practice in dentistry is not recognized to exist in Montana. If the denturists in Montana want to expand their scope of practice and have such a degree recognized, the first step is to have their school recognized by the State of Montana's accreditation agency or have their accrediting Council recognized by the Board of Regents.

As with everything, there is a right way and a wrong way to develop and expand an area of professional practice. The legislature has outlined the parameters of a denturist's scope of practice. The Board of Dentistry is directed to regulate within those parameters to ensure the safety and protection of the people of Montana. This amendment will permit the Board to enforce the existing scope of practice until such time as proper steps are taken to show the

validity of the degree and then implement a doctoral level of dentistry practice.

LIVING

Roundup

Church plans family fun event

Shining Mountain Church and Positive Living Center will host a Family Fun Day from 5-8 p.m. on Aug. 27.

The event is open to all families in the community. Activities will include sack races, a treasure hunt, two and three-legged races, wheel bagrow races, bobbing for apples and a sing-along.

There will also be barbecued hot dogs, munchies and ice cream cones.

Cost is \$10 per family. The church is located at 476 6th Ave. S.E. in Kalispell. Call 257-6535 for more information.

Retreat planned for adoptive families

Montana Families with Children from China is sponsoring an international adoptive family retreat at Fairmont Hot Springs on Oct. 20-22.

Activities include a western barbecue, kite flying, adult Tai Chi, Taekwondo, an ice cream social, group swim and other children's activities.

A variety of accommodations are available. Participants can reserve rooms at the resort, rent cabins, or camp at a nearby campground.

For further information contact Trudi King at (406) 632-3550 or Joan Dreyer at (406) 652-1591.

WIC tea honors mothers and babies

In celebration of World Breastfeeding Month, the Flathead City-County Health Department's Women, Infant, Child program is sponsoring a Breastfeeding Tea to honor all breastfeeding mothers and their babies.

The tea will be from 1-3 p.m.

on Aug. 25 in the community room of Courthouse East.

Guest speaker is Joanne Tremper, CNM, and new mothers can learn helpful information while enjoying tea, cookies, scones and fruit.

Childcare will be provided by the WIC staff for children six months and older. Infants under six months may attend the tea with their mothers.

The WIC program promotes breastfeeding and believes this is the best nutrition for infants, especially in the first six months of life.

For more information contact Wendy Barton at 758-5752.

Walkathon is for Flathead animals

The Animal Rehab Center and the Northwest Montana Humane Society are looking for volunteers for the 10th Annual Dog Walkathon "AK for K9s."

The autumn event is the first joint venture of the two groups, and other collaborative efforts are planned for the future. The ARC and The Humane Society are forming the alliance to share resources and experiences to help more animals in the Flathead.

Anyone interested in participating or volunteering for the event can contact Sue at 752-7227.

Medical dentistry students graduate

The College of Medical Dentistry, Mills Grae University, will hold its annual graduation at the WestCoast Hotel (formerly Cavanaugh's), in Ballroom A at 5 p.m. on Aug. 24.

The current graduating class of 30 students will receive their Doctor of Medical Dentistry degrees from Dr. Wayne Kernell, dean of the Kalispell college.

Four of the graduates are from Montana, with the remainder from 18 other states.

Medical dentistry is dedicated to providing the highest quality health care for all patients, regardless of socioeconomic status. Medical dentists specialize in the diagnosis and treatment of disorders associated with the loss of teeth, including removable prosthetic appliances and a variety of health problems associated with the loss of teeth.

A reception to honor the graduates will be held after the ceremony in Ballroom B. Both the ceremony and the reception are open to the public.

To learn more about Mills Grae University or the field of dentistry, contact Sybil Oerughty at (406) 756-0894.

Bridge club offers free lessons

The Kalispell Duplicate Bridge Club is offering six free Easybridge lessons to introduce valley residents to this pastime.

The lessons are designed for beginners, and will be held on Tuesdays from 1-3:30 p.m. on Tuesdays beginning Sept. 12.

Lessons are also being offered every Wednesday from 7-9:30 p.m. beginning Sept. 13.

The bridge club provides textbooks free of charge, and the lessons are open to new players of all ages. Partners are provided if necessary. Students will begin playing the first day.

The Kalispell Duplicate Bridge Club is located in the Central School Museum, at 134 Second Ave. East.

For more information contact Joy Wildenbour at 254-2533. Wildenbour is an approved bridge teacher and a member of the American Bridge Teachers Association.

Duplicate winners

Recent duplicate bridge winners are:

Aug. 9: 1. Myrna D. Parker & Mr. and Mr. Andrew Koch Jr.; 2. F. Strand, Joy Wildenbour, Joanne McLean, Beau Mann.

Strata 11 — 1. Bob Howard, Hazel Montgomery; 2. Gene Willis, Shienknecht.

Aug. 11: 1. Pooki H. Arlyne Gottschalk; 2. McLean, Joy Wildenbour, Brian Cloutier, Bob R. & Betty Newmann, Th. st.

For information regarding play or partners, call 14 Housleigh at 755-6338.

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I'm real interested in denturtry. I would like more information on this school (). I finished dental laboratory school in Pittsburgh in 1988. I had a dental laboratory, working for two dentists until April. I did it part time and worked in a factory during the day so it's hard to say I am going back to school and just drop everything. But I'm trying to figure out how I can juggle my life to do this. Thanks for your web site.

D.B. Pennsylvania

The education offers a doctors degree. Soon it will be necessary in getting a Pennsylvania license. The last abbreviated class starts in October. The total program consists of four ten day courses at \$1800 each and are about four months apart. After this one, the only way to get a DDM is the four year program which will replace the one currently available. Isn't it encouraging to know that once you have your license, you won't ever have to work in a factory again? Thank you for your request. We hope this is of some help.

★ **Who is the "Council on Denturtry Education" and what is the address? Thank you.**
Floyd S., Certified Denturist

It's the Commission on Accreditation, Council on Denturtry Education, American Denturtry Association. The address is P.O. Box 235, Kalispell, MT 59901. The Council publishes the "Standards for Denturtry Educational Programs" and is the recognized national accrediting agency for denturtry.
(This is a question asked to: Ronald Gerugthy DDS, PHD; Dean of IAPC College of Denturtry)

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Degree Key

A = Associate

B = Bachelor

M = Masters

D = Doctorate

Institution	Initially Accredited	Degree Level
Marylhurst University, Marylhurst, OR http://www.marylhurst.edu/	1977	B,M
Miles Community College, Miles City, MT http://www.mcc.cc.mt.us/	1971	A
Montana State University – Billings, Billings, MT http://www.msubillings.edu/	1932	A,B,M
Montana State University – Bozeman, Bozeman, MT http://www.montana.edu/	1932	B,M,D
Montana State University – Northern, Havre, MT http://www.nmclites.edu/	1932	A,B,M
Montana State University College of Technology-Great Falls, Great Falls, MT http://www.msugf.edu/	1979	A
Montana Tech of The University of Montana, Butte, MT http://www.mtech.edu/	1932	A,B,M
Mount Angel Seminary, St. Benedict, OR http://www.mtangel.edu/	1929	B,M
Mt. Hood Community College, Gresham, OR http://www.mhcc.cc.or.us/	1972	A
National College of Naturopathic Medicine, Portland, OR http://www.ncnm.edu/	Candidate 2000	A
North Idaho College, Coeur d'Alene, ID http://www.nidc.edu/	1947	A
North Seattle Community College, Seattle, WA http://www.gonorth.org/	1973	A
Northwest Christian College, Eugene, OR	1962	A,B,M

<http://www.nwcc.edu/>

Northwest College of the Assemblies of God, Kirkland, WA http://www.nwcollege.edu/	1973	A,B
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Northwest Indian College, Bellingham, WA http://www.nwic.edu/	1993	A
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Northwest Nazarene University, Nampa, ID http://www.nnu.edu/	1930	A,B,M
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Olympic College, Bremerton, WA http://oc.ctc.edu/	1948	A
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Oregon Graduate Institute of Science & Technology, Portland, OR http://www.ogi.edu/	1973	M,D
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Oregon Health Sciences University, Portland, OR http://www.ohsu.edu/	1980	A,B,M,D
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Oregon Institute of Technology, Klamath Falls, OR http://www.oit.edu/	1962	A,B
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Oregon State University, Corvallis, OR http://osu.orst.edu/	1924	B,M,D
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Pacific Lutheran University, Tacoma, WA http://www.plu.edu/	1936	B,M
--	------	-----

Pacific Northwest College of Art, Portland, OR http://www.pnca.edu/	1961	B
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Pacific University, Forest Grove, OR http://www.pacificu.edu/	1929	B,M,D
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Peninsula College, Port Angeles, WA http://www.pc.ctc.edu/	1965	A
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Pierce College, Puyallup, WA http://www.pierce.ctc.edu/	1972	A
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Portland Community College, Portland, OR http://www.pcc.edu/	1970	A
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Portland State University, Portland, OR http://www.pdx.edu/	1955	B,M,D
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Prince William Sound Community College, Valdez, AK http://www.uaa.alaska.edu/pwscc/	1989	A
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Reed College, Portland, OR	1920	B,M
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<http://aweb.reed.edu>

Renton Technical College, Renton, WA

1978

A

<http://www.renton-tc.ctc.edu/>

Ricks College, Rexburg, ID

1936

A

<http://www.ricks.edu/>

Rocky Mountain College, Billings, MT

1949

A,B

<http://www.rocky.edu/>

Rogue Community College, Grants Pass, OR

1976

A

<http://www.rogue.cc.or.us/>

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Amendments to House Bill No. 120
Senate 1st Reading Copy

For the Senate Business and Labor Committee

Prepared by Beverly Marlow
for the Department of Commerce
February 28, 2001

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 13
DATE 3-1-2001
BILL NO. HB120

1. Page 16, line 4.

Following: "year"

Insert: "."

2. Page 16, line 5-6.

Strike: the first "and" through "membership."

- END -

DATE March 1, 2001
 SENATE COMMITTEE ON Business & Labor
 BILLS BEING HEARD TODAY: HB 95, HB 234, HB 120

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Sheldon Ivers	727-2444	Board of Dentistry	120	✓	
RON ASHA BRAMER	444-4711	STATE FARM INS	234	✓	
TIM MOORE	442-6180	Board of Appraisers	120	✓	
Jeanne Bauman	442-9081	Nat Credit Unions League	234	✓	
LEE WISER	587-3631	SELF (DENTURIST)	120	✓	✓
Barbara Swihla	841-2341	Board of Nursing	120		
Peggy Trenk	443-4832	MT. Assoc. of Realtors	120 234	✓	
Jack Kane	444-3934	Commerce	95	✓	
Lewis Smith	442-2980	Boards of Dentistry & Nursing	120	✓	
Tony HERRERT	4111	DOA/ISO	134	✓	
Steve Picher	442-3436	MT Stockgrowers	HB 95	✓	
John Sample	443-7487	MT CATTLEWOMEN	HB 95	✓	
Bill Stebens	442-6354	Nat Food Bank		✓	✓

Jani, McCall 442-0216 Dege Bullygo Assoc 120 ✓
 Sam north 442-3261 self 120

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Amee Gmoltz 443-6820 Verizon HB 234 (✓)
 Sam Butler 442-6710 MNA HB 120 support

DATE March 1, 2001

SENATE COMMITTEE ON Business & Labor

BILLS BEING HEARD TODAY: HB 95, HB 234, HB 120

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Charles Brooks	698-2380	B. Hing, Chamber	HB 95		✓
Brenda H. Blair	841-2302	POL / Commerce	HB 120		I
Dina Addington	841-2303	POL / Commerce	HB 120		I
Nancy Butler	444-725	State Fund	HB 234	✓	
Jennifer Massman	641-2317	POL / Commerce	HB 120		I
JENNIFER WORSWICK	841-2333	POL	HB 120		
Janice Joseph	444-5376	SOS	HB 234	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN MIKE TAYLOR**, on March 6, 2001 at 8:00 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Mike Taylor, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Edward Butcher (R)
Sen. Vicki Cocchiarella (D)
Sen. Sam Kitzenberg (R)
Sen. Dale Mahlum (R)
Sen. Glenn Roush (D)
Sen. Don Ryan (D)

Members Excused: Sen. Dale Berry (R)

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Kyanne Kelly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 156, 3/3/2001; HB 379,
3/3/2001
Executive Action: HB 150; HB 120

Motion/Vote: SEN. ROUSH moved that HB 150 BE TABLED. Motion failed 5-4 with Kitzenberg, Mahlum, Roush, and Ryan voting aye.

Motion/Vote: SEN. BUTCHER moved that HB 150 BE CONCURRED IN AS AMENDED. Motion failed 5-4 with Berry, Butcher, Sprague, and Taylor voting aye.

Motion/Vote: SEN. ROUSH moved that HB 150 BE TABLED. Motion carried 5-4 with Berry, Butcher, Sprague, and Taylor voting no.

EXECUTIVE ACTION ON HB 120

Motion/Vote: SEN. MAHLUM moved that HB 120 AMENDMENTS # 12002 BE ADOPTED. Motion carried unanimously. EXHIBIT(bus51a05)

Motion: SEN. COCCHIARELLA moved that HB 120 AMENDMENTS #102001, EXCEPT SECTION 5, BE ADOPTED.

SENATOR BERRY asked if there have been random complaint filings. CHAIRMAN TAYLOR said yes. SENATOR BERRY said page 3 of the amendment should read that if in the process of investigation a violation of the code was discovered then the board could initiate a complaint. Steve Meloy, Administrator of the Professional and Occupational Licensing Division said if a board member brings a complaint they usually reclude themselves when it comes to the time to vote. SENATOR COCCHIARELLA said the language makes it tough for a board member to do their job. SENATOR BERRY said he doesn't see any conflict, that the board member can direct people where to go without joining in with them on the complaint.

Vote: Motion carried unanimously. EXHIBIT(bus51a06)

Motion/Vote: SEN. TAYLOR moved that HB 120 AMENDMENTS #012001, SECTION 5, BE ADOPTED. Motion carried 7-2 with Cocchiarella and Kitzenberg voting no.

Motion/Vote: SEN. MAHLUM moved that HB 120 BE CONCURRED IN AS AMENDED. Motion carried 7-2 with Mahlum and Ryan voting no.

DATE 3-6-2001

124

Amendments to House Bill No. 120
3rd Reading Copy

For the Senate Business and Labor Committee

Prepared by Bartley Campbell
March 6, 2001 (7:34AM)

1. Page 16, lines 5 and 6.

Strike: the first "and" on line 5 through "membership" on line 6

- END -

DATE 3-6-2001BILL NO. HB120

Amendments to House Bill No. 120
3rd Reading Copy

Requested by Senator Mike Taylor

For the Senate Business and Labor Committee

Prepared by Bartley Campbell
March 5, 2001 (3:21PM)

1. Title, page 1, line 8.

Following: ";

Insert: "REQUIRING SCREENING PANELS TO PUT CERTAIN FINDINGS IN WRITING; REQUIRING COMPLAINTS OF UNPROFESSIONAL CONDUCT TO BE MADE IN GOOD FAITH AND WITH A REASONABLE BASIS FOR ANY ALLEGATIONS IN THE COMPLAINTS; PROHIBITING BOARD MEMBERS FROM FILING COMPLAINTS WITH THEIR BOARD; REQUIRING THAT NOTICES FOR HEARINGS BE BASED ON WRITTEN FINDINGS OF POSSIBLE VIOLATIONS;"

2. Title, page 1, line 9.

Following: "APPRAISERS"

Insert: "AND CLARIFYING REQUIREMENTS FOR SCREENING PANELS"

3. Title, page 2, line 1.

Following: "37-1-131,"

Insert: "37-1-307, 37-1-308, 37-1-309,"

4. Page 3, following line 20.

Insert: "(4) A screening panel of the board, established pursuant to 37-1-307, must be composed of at least three members and shall include one member of the board who represents the public and is not engaged in the occupation of real estate appraisal. Any determination that a licensee has violated a statute or rule in a manner that justifies disciplinary proceedings must be concurred in by a majority of the members of the screening panel."

Renumber: subsequent subsections

5. Page 6, following line 4.

Insert: "Section 8. Section 37-1-307, MCA, is amended to read:

"37-1-307. Board authority. (1) A board may:

(a) hold hearings as provided in this part;

(b) issue subpoenas and administer oaths in connection with

investigations and disciplinary proceedings under this part. Subpoenas must be relevant to the complaint, issued by a majority vote of board members not serving on the screening panel described in subsection (1)(e), and signed by the presiding officer of the board. Subpoenas may be enforced as provided in 2-4-104.

(c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under this part;

(d) compel attendance of witnesses and the production of documents. Subpoenas may be enforced as provided in 2-4-104.

(e) establish a screening panel that determines whether there is reasonable cause to believe that a licensee has violated a particular statute, or rule, or standard justifying disciplinary proceedings. A screening panel shall specify in writing the particular statute, rule, or standard that the panel believes may have been violated. The screening panel shall also state in writing the reasonable grounds that support the panel's finding that a violation may have occurred. The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening panel for the case.

(f) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chapter.

(2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information regarding its licensees and license applicants and regarding possible unlicensed practice.

[(3) Each board shall require a license applicant to provide the applicant's social security number as a part of the application. Each board shall keep the social security number from this source confidential, except that a board may provide the number to the department of public health and human services for use in administering Title IV-D of the Social Security Act.] (Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)"

{Internal References to 37-1-307:

37-1-101x 37-1-303 x 37-1-308 x 37-1-309 x
37-35-301* x 37-35-301*x}"

Insert: "Section 9. Section 37-1-308, MCA, is amended to read:

"37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -- exceptions. (1) Except as provided in subsection (3) subsections (4) and (5), a person, government, or private entity may submit a written complaint to the department charging a licensee or license applicant with a

violation of this part and specifying the grounds for the complaint.

(2) If the department receives a written complaint or otherwise obtains information that a licensee or license applicant may have committed a violation of this part, the department may, with the concurrence of a member of the screening panel established in 37-1-307, investigate to determine whether there is reasonable cause to believe that the licensee or license applicant has committed the violation.

(3) A person or private entity, but not a government entity, filing a complaint under this section in good faith and with a reasonable basis for each allegation contained in the complaint is immune from suit in a civil action related to the filing or contents of the complaint.

~~(3)~~(4) A person under legal custody of a county detention center or incarcerated under legal custody of the department of corrections may not file a complaint under subsection (1) against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while detained or confined in a county detention center or incarcerated under legal custody of the department of corrections unless the complaint is first reviewed by a correctional health care review team provided for in 37-1-331.

(5) A board member, unless specifically authorized by law, may not file a complaint with the board on which the member serves or otherwise act in concert with a complainant in developing, authoring, or initiating a complaint to be filed with the board."

{Internal References to 37-1-308:

37-1-331 x 37-1-331 x 37-35-301*x 37-35-301*x
37-54-302 x}"

Insert: "Section 10. Section 37-1-309, MCA, is amended to read:

"37-1-309. Notice -- request for hearing. (1) If a reasonable cause determination is made pursuant to 37-1-307 that a violation of this part has occurred, a notice must be prepared by department legal staff and served on the alleged violator. The notice may be served by certified mail to the current address on file with the board or by other means authorized by the Montana Rules of Civil Procedure. The notice may not allege a violation of a particular statute, rule, or standard unless the board or the board's screening panel, if one has been established, has made a written determination that there are reasonable grounds to believe that the particular statute, rule, or standard has been violated.

(2) A licensee or license applicant shall give the board the licensee's or applicant's current address and any change of address within 30 days of the change.

(3) The notice must state that the licensee or license applicant may request a hearing to contest the charge or charges. A request for a hearing must be in writing and received in the offices of the department within 20 days after the licensee's receipt of the notice. Failure to request a hearing constitutes a default on the charge or charges, and the board may enter a decision on the basis of the facts available to it."

{Internal References to 37-1-309:

37-35-301* 37-35-301*}"

Renumber: subsequent sections

6. Page 44, line 30.

Strike: "36"

Insert: "39"

7. Page 45, line 1.

Strike: "36"

Insert: "39"

8. Page 45, line 2.

Strike: "42"

Insert: "45"

9. Page 45, line 3.

Strike: "42"

Insert: "45"

10. Page 45, line 5.

Strike: "8"

Insert: "11"

Strike: "72"

Insert: "75"

Strike: "73"

Insert: "76"

11. Page 45, line 7.

Strike: "9"

Insert: "12"

Strike: "44"

Insert: "47"

Strike: "46"

Insert: "49"

Strike: "71"
Insert: "74"

12. Page 45, line 9.
Strike: "45"
Insert: "48"

13. Page 45, line 11.
Strike: "44"
Insert: "47"

- END -

DATE 3-6-2001 BILL NO. HB 120 NUMBER 5

Sen Mathum moves ~~BE~~ ^{ADOPTED} CONCURRED
Amendment 12002.

131

DATE 3-6-2001 BILL NO. HB/20 NUMBER 6

Sen C. moves be adopted

Except sec 5

HB 012001.abc

132

DATE 3-6-2001 BILL NO. HB/20 NUMBER 7

MOTION: San Rafael moves #5 be concurred in
Am

[illegible]

DATE 3-6-2001 BILL NO. HB/20 NUMBER 8

Sen Mahlum move it Be concurred
as amended

134



AN ACT GENERALLY REVISING PROFESSIONAL LICENSING LAWS; ELIMINATING THE TWO CONSECUTIVE TERM LIMIT FOR ALTERNATIVE HEALTH CARE BOARD MEMBERS; ALLOCATING THE BOARD OF PSYCHOLOGISTS TO THE DEPARTMENT OF COMMERCE FOR ADMINISTRATIVE PURPOSES; REQUIRING SCREENING PANELS TO PUT CERTAIN FINDINGS IN WRITING; CLARIFYING WHEN BOARD MEMBERS MAY FILE COMPLAINTS WITH THEIR BOARD; REQUIRING THAT NOTICES FOR HEARINGS BE BASED ON WRITTEN FINDINGS OF POSSIBLE VIOLATIONS; INCREASING THE NUMBER OF MEMBERS ON THE BOARD OF REAL ESTATE APPRAISERS AND CLARIFYING REQUIREMENTS FOR SCREENING PANELS; ELIMINATING CERTAIN REQUIREMENTS FOR CERTAIN MEMBERS OF THE BOARD OF REAL ESTATE APPRAISERS; CLARIFYING REQUIREMENTS FOR MEMBERS OF THE BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS; REPEALING THE LICENSE FEE EXEMPTION FOR PERSONS IN MILITARY SERVICE; PROVIDING A GENERAL DEFINITION OF "QUORUM" FOR BOARDS AND ELIMINATING INDIVIDUAL BOARD DEFINITIONS OF "QUORUM"; PROVIDING THAT MENTAL INTENT IS NOT A PREREQUISITE TO UNPROFESSIONAL CONDUCT; ELIMINATING AN EXEMPTION FROM LICENSING REQUIREMENTS FOR COMMISSIONED MEDICAL OFFICERS OF THE ARMED FORCES; CLARIFYING SUPERVISION REQUIREMENTS FOR DENTAL AUXILIARY PERSONNEL; ELIMINATING THE REQUIREMENT THAT THE BOARD OF NURSING ACT JOINTLY WITH THE BOARD OF MEDICAL EXAMINERS IN ADOPTING RULES; ELIMINATING CERTAIN QUALIFICATIONS FOR THE EXECUTIVE DIRECTOR OF THE BOARD OF NURSING; CLARIFYING ISSUING AND RENEWAL PERIODS FOR NURSES' LICENSES; CHANGING THE MEDICAL EVALUATION REQUIREMENTS REGARDING THE DISPENSING OF HEARING AIDS; REVISING THE CALCULATION OF LATE FEES FOR PSYCHOLOGISTS' LICENSE RENEWALS; ELIMINATING SINGEING FROM THE DEFINITION OF "PRACTICE OF BARBERING"; ELIMINATING CERTAIN QUALIFICATIONS FOR THE EXECUTIVE DIRECTOR OF THE BOARD OF OUTFITTERS; ELIMINATING CERTAIN QUALIFICATIONS FOR THE EXECUTIVE SECRETARY OF THE BOARD OF REALTY REGULATION; ELIMINATING BROKER ASSOCIATE AND BROKER OWNER DESIGNATIONS FOR REAL ESTATE; PROVIDING FOR TEMPORARY LICENSURE OF OUT-OF-STATE APPRAISERS; GENERALLY REVISING STATUTES PERTAINING TO ARCHITECTURE AND PROVIDING FOR LICENSE VERIFICATION; CHANGING

REQUIREMENTS FOR LANDSCAPE ARCHITECTS; GENERALLY REVISING STATUTES PERTAINING TO PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS AND SUBSTITUTING LICENSURE FOR REGISTRATION; AMENDING SECTIONS 2-15-1840, 2-15-1851, 2-15-1868, 2-15-1873, 23-3-401, 37-1-131, 37-1-307, 37-1-308, 37-1-309, 37-3-103, 37-3-204, 37-3-211, 37-4-202, 37-4-408, 37-8-202, 37-8-204, 37-8-431, 37-12-201, 37-14-201, 37-15-201, 37-16-201, 37-16-303, 37-17-201, 37-17-306, 37-18-201, 37-19-202, 37-24-201, 37-26-202, 37-28-103, 37-30-101, 37-47-202, 37-50-201, 37-51-102, 37-51-209, 37-51-302, 37-51-309, 37-51-315, 37-60-201, 37-65-201, 37-65-303, 37-65-304, 37-65-308, 37-66-301, 37-66-304, 37-67-101, 37-67-102, 37-67-103, 37-67-201, 37-67-204, 37-67-301, 37-67-303, 37-67-304, 37-67-305, 37-67-306, 37-67-308, 37-67-309, 37-67-310, 37-67-311, 37-67-312, 37-67-314, 37-67-315, 37-67-316, 37-67-318, 37-67-320, 37-67-321, 37-67-331, 37-67-332, 37-68-201, 37-69-201, AND 70-22-103, MCA; REPEALING SECTIONS 10-1-605, 37-2-111, AND 37-66-305, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-15-1840, MCA, is amended to read:

"2-15-1840. Alternative health care board -- composition -- terms -- allocation. (1) There is an alternative health care board.

(2) The board consists of six members appointed by the governor with the consent of the senate. The members are:

(a) two persons from each of the health care professions regulated by the board who have been actively engaged in the practice of their respective professions for at least 3 years preceding appointment to the board;

(b) one public member who is not a member of a profession regulated by the board; and

(c) one member who is a Montana physician whose practice includes obstetrics.

(3) The members must have been residents of this state for at least 3 years before appointment to the board.

(4) All members shall serve staggered 4-year terms. ~~A member may not be appointed for more than~~

~~two consecutive terms.~~ The governor may remove a member from the board for neglect of a duty required by law, for incompetency, or for unprofessional or dishonorable conduct.

(5) The board is allocated to the department for administrative purposes only, as prescribed in 2-15-121.

(6) The board is designated a quasi-judicial board for the purposes of 2-15-124, except that one member of the board need not be an attorney licensed to practice law in this state."

Section 2. Section 2-15-1851, MCA, is amended to read:

"2-15-1851. Board of psychologists. (1) There is a board of psychologists.

(2) The board consists of six members appointed by the governor with the consent of the senate. Two members must be licensed psychologists in private practice, one member must be a licensed psychologist in public health, one member must be a licensed psychologist engaged in the teaching of psychology, and two members must be from the general public. A member may not serve consecutive 5-year terms but may be reappointed after 5 years following the termination of the previous appointment.

(3) Members shall serve staggered 5-year terms.

(4) The board is allocated to the department for administrative purposes only, as prescribed in 2-15-121."

Section 3. Section 2-15-1868, MCA, is amended to read:

"2-15-1868. Board of real estate appraisers. (1) There is a board of real estate appraisers.

(2) The board consists of ~~five~~ seven members appointed by the governor with the consent of the senate.

(3) ~~Three~~ Five members must be licensed or certified real estate appraisers, and two members must be representatives of the public who are not engaged in the occupation of real estate appraisal.

(4) A screening panel of the board, established pursuant to 37-1-307, must be composed of at least three members and shall include one member of the board who represents the public and is not engaged in the occupation of real estate appraisal. Any determination that a licensee has violated a statute or rule in a manner that justifies disciplinary proceedings must be concurred in by a majority of the members of the screening panel.

~~(4) Only one member of the board may be primarily affiliated with the same recognized appraisal group defined by the appraisal foundation.~~

~~(5) (a) Before January 1, 1992, a real estate appraiser board member must be a designated member of a national real estate appraisal organization that requires for membership appraisal experience, certain educational qualifications, successful completion of an examination, and adherence to the standards of professional appraisal practice.~~

~~(b) On and after January 1, 1992, three real estate appraiser board members must be certified real estate appraisers.~~

~~(6)~~(5) Members shall serve staggered 3-year terms. A member may not serve for more than two consecutive terms.

~~(7)~~(6) The board is allocated to the department for administrative purposes only, as prescribed in 2-15-121.

~~(8)~~(7) A board member may be removed from the board by the governor for neglect or cause.

~~(9)~~(8) The board shall meet at least once each calendar quarter to transact its business. ~~Three members constitute a quorum for transacting business.~~

~~(10)~~(9) The board shall elect a ~~chairman~~ presiding officer from among its members.

~~(11)~~(10) A board member ~~shall~~ must receive compensation and travel expenses, as provided in 37-1-133."

Section 4. Section 2-15-1873, MCA, is amended to read:

"2-15-1873. Board of professional engineers and professional land surveyors. (1) There is a board of professional engineers and professional land surveyors.

(2) The board consists of nine members appointed by the governor with the consent of the senate. The members are:

(a) five professional engineers who have been engaged in the practice of engineering for at least 12 years and who have been in responsible charge of engineering teaching or important engineering work for at least 5 years and ~~registered~~ licensed in Montana for at least 5 years. No more than two of these members may be from the same branch of engineering.

(b) two professional and practicing land surveyors who have been engaged in the practice of land

surveying for at least 12 years and who have been in responsible charge of land surveying or important land surveying work for at least 5 years and ~~registered~~ licensed in Montana for at least 5 years;

(c) two representatives of the public who are not engaged in or directly connected with the practice of engineering or land surveying.

(3) Each member ~~shall~~ must be a citizen of the United States and a resident of this state. A member, after serving three consecutive terms, ~~shall~~ may not be reappointed.

(4) (a) Except as provided in subsection (4)(b), each member shall serve for a term of 4 years.

(b) The governor may remove a member for misconduct, incompetency, or neglect of duty; or for any other sufficient cause and may shorten the term of one public member so that it is not coincident with the term of the other public member.

(5) The board is allocated to the department for administrative purposes only, as prescribed in 2-15-121."

Section 5. Section 23-3-401, MCA, is amended to read:

"23-3-401. Board organization -- compensation -- ~~meetings~~ -- department to keep records. (1) The board shall annually elect officers as it considers necessary. ~~Two of the members of the board constitute a quorum to do business, and except as provided in 23-3-402, the concurrence of at least two members is necessary to take board action.~~

(2) The members of the board are entitled to compensation and expenses, as provided in 37-1-133.

(3) The department shall keep a record of the board's proceedings, which are public records subject to public inspection."

Section 6. Section 37-1-131, MCA, is amended to read:

"37-1-131. Duties of boards -- quorum required. Each board within the department shall:

(1) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within its jurisdiction;

(2) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within its jurisdiction. The hearings must be conducted by a hearing examiner when required under 37-1-121(1).

(3) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (2), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71 or 72;

(4) pay to the department its pro rata share of the assessed costs of the department under 37-1-101(6);

(5) consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

(6) A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business."

Section 7. Mental intent -- unprofessional conduct. A licensee may be found to have violated a provision of 37-1-316 or a rule of professional conduct enacted by a governing board without proof that the licensee acted purposefully, knowingly, or negligently.

Section 8. Section 37-1-307, MCA, is amended to read:

"37-1-307. Board authority. (1) A board may:

(a) hold hearings as provided in this part;

(b) issue subpoenas and administer oaths in connection with investigations and disciplinary proceedings under this part. Subpoenas must be relevant to the complaint, issued by a majority vote of board members not serving on the screening panel described in subsection (1)(e), and signed by the presiding officer of the board. Subpoenas may be enforced as provided in 2-4-104.

(c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under this part;

(d) compel attendance of witnesses and the production of documents. Subpoenas may be enforced as provided in 2-4-104.

(e) establish a screening panel that determines whether there is reasonable cause to believe that a licensee has violated a particular statute, or rule, or standard justifying disciplinary proceedings. A

screening panel shall specify in writing the particular statute, rule, or standard that the panel believes may have been violated. The screening panel shall also state in writing the reasonable grounds that support the panel's finding that a violation may have occurred. The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening panel for the case.

(f) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chapter.

(2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information regarding its licensees and license applicants and regarding possible unlicensed practice.

((3) Each board shall require a license applicant to provide the applicant's social security number as a part of the application. Each board shall keep the social security number from this source confidential, except that a board may provide the number to the department of public health and human services for use in administering Title IV-D of the Social Security Act.) (Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)"

Section 9. Section 37-1-308, MCA, is amended to read:

"37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -- exceptions. (1) Except as provided in ~~subsection (3)~~ subsections (4) and (5), a person, government, or private entity may submit a written complaint to the department charging a licensee or license applicant with a violation of this part and specifying the grounds for the complaint.

(2) If the department receives a written complaint or otherwise obtains information that a licensee or license applicant may have committed a violation of this part, the department may, with the concurrence of a member of the screening panel established in 37-1-307, investigate to determine whether there is reasonable cause to believe that the licensee or license applicant has committed the violation.

(3) A person or private entity, but not a government entity, filing a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint.

~~(3)~~(4) A person under legal custody of a county detention center or incarcerated under legal custody of the department of corrections may not file a complaint under subsection (1) against a licensed

or certified provider of health care or rehabilitative services for services that were provided to the person while detained or confined in a county detention center or incarcerated under legal custody of the department of corrections unless the complaint is first reviewed by a correctional health care review team provided for in 37-1-331.

(5) A board member may file a complaint with the board on which the member serves or otherwise act in concert with a complainant in developing, authoring, or initiating a complaint to be filed with the board if the board member determines that there are reasonable grounds to believe that a particular statute, rule, or standard has been violated."

Section 10. Section 37-1-309, MCA, is amended to read:

"37-1-309. Notice -- request for hearing. (1) If a reasonable cause determination is made pursuant to 37-1-307 that a violation of this part has occurred, a notice must be prepared by department legal staff and served on the alleged violator. The notice may be served by certified mail to the current address on file with the board or by other means authorized by the Montana Rules of Civil Procedure. The notice may not allege a violation of a particular statute, rule, or standard unless the board or the board's screening panel, if one has been established, has made a written determination that there are reasonable grounds to believe that the particular statute, rule, or standard has been violated.

(2) A licensee or license applicant shall give the board the licensee's or applicant's current address and any change of address within 30 days of the change.

(3) The notice must state that the licensee or license applicant may request a hearing to contest the charge or charges. A request for a hearing must be in writing and received in the offices of the department within 20 days after the licensee's receipt of the notice. Failure to request a hearing constitutes a default on the charge or charges, and the board may enter a decision on the basis of the facts available to it."

Section 11. Section 37-3-103, MCA, is amended to read:

"37-3-103. Exemptions from licensing requirements. (1) This chapter does not prohibit or require a license with respect to any of the following acts:

(a) the gratuitous rendering of services in cases of emergency or catastrophe;

(b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if the physician has any established or regularly used hospital connections in this state or maintains or is provided with, for the physician's regular use, an office or other place for rendering the services, the physician must possess a license to practice medicine in this state.

(c) the practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) the practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) the practice of optometry under the conditions and limitations defined by the laws of this state;

(f) the practice of osteopathy under the conditions and limitations defined in chapter 5 of this title for those doctors of osteopathy who do not receive a physician's certificate under this chapter;

(g) the practice of chiropractic under the conditions and limitations defined by the laws of this state;

(h) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;

(i) the performance by commissioned medical officers ~~of the armed forces of the United States~~, of the United States public health service, or of the United States department of veterans affairs of their lawful duties in this state as officers;

(j) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses or of midwife services by registered nurse-midwives under the supervision of a licensed physician;

(k) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this chapter. The board may require a resident physician to be licensed if the physician otherwise engages in the practice of medicine in the state of Montana.

(l) the rendering of services by a physical therapist, technician, or other paramedical specialist under the appropriate amount and type of supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a paramedical specialist;

(m) the rendering of services by a physician assistant-certified in accordance with Title 37, chapter 20;

(n) the practice by persons licensed under the laws of this state to practice a limited field of the healing arts, and not specifically designated, under the conditions and limitations defined by law;

(o) the execution of a death sentence pursuant to 46-19-103;

(p) the practice of direct-entry midwifery. For the purpose of this section, the practice of direct-entry midwifery means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or the postpartum period. Except as authorized in 37-27-302, a direct-entry midwife may not dispense or administer a prescription drug, as those terms are defined in 37-7-101.

(q) the use of an automated external defibrillator pursuant to Title 50, chapter 6, part 5.

(2) Licensees referred to in subsection (1) who are licensed to practice a limited field of healing arts shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses and, with the exception of those licensees who hold a medical degree, may not use the title "M.D." or any word or abbreviation to indicate or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed."

Section 12. Section 37-3-204, MCA, is amended to read:

"37-3-204. **Meetings.** The board shall hold meetings for examinations and for other business properly before the board at least twice annually at times and places set by the board. The president of the board may call special meetings ~~he~~ that the president considers advisable or necessary. ~~Four members of the board constitute a quorum.~~"

Section 13. Section 37-3-211, MCA, is amended to read:

"37-3-211. **Executive secretary.** To perform the services provided for in 37-3-203(5), the department shall hire ~~a person~~ an executive secretary selected by the board, ~~who:~~

~~—— (1) is a citizen of the United States;~~

~~—— (2) is of good moral character; and~~

~~—— (3) holds at least a postgraduate degree from an accredited college or university or has equivalent experience. The degree or experience need not be in the field of medicine."~~

Section 14. Section 37-4-202, MCA, is amended to read:

"37-4-202. Meetings -- notice -- ~~quorum~~ records. (1) The board shall meet at least once each year in this state at the call of the president and secretary-treasurer. Five days' notice must be given by the department to board members of the time and place of the meeting of the board.

(2) Meetings held for the purpose of examining candidates for a license to practice dentistry in this state may not exceed 6 days.

(3) ~~Six members of the board constitute a quorum for the transaction of business. Its Board~~ proceedings are open to public inspection in cases of public interest unless a privacy issue is involved.

(4) Money collected by the department under this chapter must be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

(5) The department shall keep a complete record of meetings and proceedings of the board and shall keep a complete account of money received and disbursements made by the department."

Section 15. Section 37-4-408, MCA, is amended to read:

"37-4-408. Auxiliary personnel -- employment, duties, and limitations. A dental auxiliary is a person other than a licensed dental hygienist employed by a licensed dentist. The board may, within the limitations of this chapter, adopt rules that define the qualifications and outline the tasks of any unlicensed auxiliary personnel to be employed by a licensed dentist in ~~his~~ the dentist's office, except that nothing in this section may be construed to allow the board by rule to provide for delegation by a licensed dentist to any ~~such~~ auxiliary personnel any of the duties prohibited to dental hygienists under 37-4-401 or a prophylaxis. The performance of intraoral tasks by all dental auxiliaries, as permitted by board rules, must be under the direct supervision of ~~the a~~ a licensed dentist ~~employing the personnel.~~"

Section 16. Section 37-8-202, MCA, is amended to read:

"37-8-202. Organization -- meetings -- powers and duties. (1) The board shall meet annually and shall elect from among the nine members a president and a secretary. The board shall hold other meetings when necessary to transact its business. ~~A majority of the board constitutes a quorum at any meeting:~~ The department shall keep complete minutes and records of the meetings and rules and orders promulgated by the board.

(2) The board may make rules necessary to administer this chapter. The board shall prescribe standards for schools preparing persons for registration and licensure under this chapter. It shall provide for surveys of schools at times it considers necessary. It shall approve programs that meet the requirements of this chapter and of the board. The department shall, subject to 37-1-101, examine and issue to and renew licenses of qualified applicants. The board shall conduct hearings on charges that may call for discipline of a licensee, revocation of a license, or removal of schools of nursing from the approved list. It shall cause the prosecution of persons violating this chapter and may incur necessary expenses for prosecutions.

(3) The board may adopt and the department shall publish forms for use by applicants and others, including license, certificate, and identity forms and other appropriate forms and publications convenient for the proper administration of this chapter. The board may fix reasonable fees for incidental services, within the subject matter delegated by this chapter.

(4) The board may participate in and pay fees to a national organization of state boards of nursing to ensure interstate endorsement of licenses.

(5) (a) The board may define the educational requirements and other qualifications applicable to recognition of advanced practice registered nurses. Advanced practice registered nurses are nurses who must have additional professional education beyond the basic nursing degree required of a registered nurse. Additional education must be obtained in courses offered in a university setting or its equivalent. The applicant must be certified or in the process of being certified by a certifying body for advanced practice registered nurses. Advanced practice registered nurses include nurse practitioners, nurse-midwives, nurse-anesthetists, and clinical nurse specialists.

(b) ~~The board of nursing and the board of medical examiners, acting jointly,~~ shall adopt rules regarding authorization for prescriptive authority of nurse specialists. If considered appropriate for a nurse specialist who applies to the board for authorization, prescriptive authority must be granted.

(6) The board shall establish a program to assist licensed nurses who are found to be physically or mentally impaired by habitual intemperance or the excessive use of narcotic drugs, alcohol, or any other drug or substance. The program must provide assistance to licensees in seeking treatment for substance abuse and monitor their efforts toward rehabilitation. For purposes of funding this program, the board shall adjust the license fee provided for in 37-8-431 commensurate with the cost of the program.

(7) The board may adopt rules for delegation of nursing tasks by licensed nurses to unlicensed persons.

(8) The board may fund additional staff, hired by the department, to administer the provisions of this chapter."

Section 17. Section 37-8-204, MCA, is amended to read:

"37-8-204. Executive director --qualifications. ~~(1)~~ The department shall hire an executive director to provide services to the board in connection with the board's duties of:

~~(a)~~ (1) prescribing curricula and standards for nursing schools and making surveys of and approving schools and courses;

~~(b)~~ (2) evaluating and approving courses for affiliation of student nurses; and

~~(c)~~ (3) reviewing qualifications of applicants for licensure.

~~(2) The executive director must be:~~

~~_____ (a) a citizen of the United States;~~

~~_____ (b) a graduate of an approved school of nursing;~~

~~_____ (c) a holder of at least a master's degree with postgraduate courses in nursing;~~

~~_____ (d) a registered professional nurse with at least 5 years' experience in teaching or administration in an approved school of nursing."~~

Section 18. Section 37-8-431, MCA, is amended to read:

"37-8-431. Renewal of license. (1) The license of a person licensed under this chapter must be renewed on the date set by department rule. At least 30 days prior to the renewal date, the department shall mail an application form for renewal of a license to each person to whom a license was issued or renewed ~~during the year~~. The applicant shall carefully complete and ~~subscribe~~ sign the application form and return it to the department with a renewal fee prescribed by the board on or before the renewal date.

(2) The board may increase or decrease the license fee so as to maintain in the state special revenue fund at all times an adequate amount to be used for the purpose of administering, policing, and enforcing the provisions of Title 37, chapter 1, and this chapter. On receipt of the application and fee, the department shall verify the accuracy of the application against its record and from other sources the board

considers reliable and issue to the applicant a certificate of renewal. The certificate of renewal renders the holder a legal practitioner of nursing for the period stated in the certificate of renewal.

(3) A licensee who allows the license to lapse by failing to renew the license may be reinstated by the board on satisfactory explanation for the failure to renew the license and on payment of the current renewal fee prescribed by the board.

(4) A person practicing nursing during the time following the date the license has expired is an illegal practitioner and is subject to the penalties provided for violations of this chapter.

(5) The board may establish a reasonable late fee for licensees who fail to renew their license by the renewal date."

Section 19. Section 37-12-201, MCA, is amended to read:

"37-12-201. Organization of board -- meetings -- powers and duties. (1) The board shall elect annually a president, vice president, and secretary-treasurer from its membership.

(2) The board shall hold a regular meeting each year at Helena and shall hold special meetings at times and places as a majority of the board designates. ~~A majority of the board constitutes a quorum:~~

(3) The board shall:

(a) administer oaths, take affidavits, summon witnesses, and take testimony as to matters coming within the scope of the board;

(b) adopt a seal that must be affixed to licenses issued;

(c) make a schedule of minimum educational requirements, which are without prejudice, partiality, or discrimination, as to the different schools of chiropractic;

(d) adopt rules necessary for the implementation, administration, continuation, and enforcement of this chapter. The rules must address but are not limited to license applications, form and display of license, license examination format, criteria for and grading of examinations, disciplinary standards for licensees, and the registration of interns and preceptors.

(e) make determinations of the qualifications of applicants under this chapter;

(f) administer the examination for licensure under this chapter;

(g) establish and collect fees, fines, and charges as provided in this chapter;

(h) issue, suspend, or revoke licenses under the conditions prescribed in this chapter; and

(i) certify that a chiropractor who meets the standards that the board by rule adopts is a qualified evaluator for purposes of 39-71-711.

(4) The department shall keep a record of the proceedings of the board, which must at all times be open to public inspection."

Section 20. Section 37-14-201, MCA, is amended to read:

"37-14-201. Compensation of board members -- meetings -- quorum. (1) Board members ~~shall~~ must receive compensation and travel expenses, as provided for in 37-1-133.

(2) The board shall meet at least twice a year and elect a ~~chairman~~ presiding officer at the first meeting of each calendar year.

~~(3) Four members of the board constitute a quorum for the purpose of transacting business."~~

Section 21. Section 37-15-201, MCA, is amended to read:

"37-15-201. Meetings. (1) The board shall meet at least once a year at a place, day, and hour determined by the board. The board shall also meet at other times and places as the bylaws of the board may provide or by call of the ~~chairman~~ presiding officer or a majority of the members of the board. ~~A quorum of the board shall consist of the majority of its members, but in no instance may a~~ A meeting of three board members who are exclusively speech-language pathologists or exclusively audiologists may not be considered a quorum.

(2) All meetings of the board for the consideration of and action on matters coming before the board are open to the public except:

(a) when matters involving the management of internal affairs of the board may be considered and acted upon by the board in executive meetings under rules prescribed by the board;

(b) sessions to prepare, approve, grade, or administer examinations;

(c) upon request of a person who has failed the licensing examinations and who is appearing to appeal the failure."

Section 22. Section 37-16-201, MCA, is amended to read:

"37-16-201. Meetings -- ~~quorum~~ -- organization. (1) The board shall meet at least once each year

at a place and time determined by the ~~chairman~~ presiding officer and at other times and places specified by the ~~chairman~~ presiding officer to carry out ~~this the provisions of this chapter. Three members constitute a quorum.~~

(2) Members of the board shall annually designate one member to serve as ~~chairman~~ presiding officer and another member to serve as secretary-treasurer."

Section 23. Section 37-16-303, MCA, is amended to read:

"37-16-303. Bill of sale -- medical evaluation requirements -- waiver. (1) Any person who practices the selling, fitting, or dispensing of hearing aids and related devices shall, upon the sale of a hearing aid or related device, deliver to the customer a bill of sale that must contain:

(a) the seller's signature and license number and the name and address of the seller's permanent place of business;

(b) a description of the make and type of the hearing aid or related device furnished and the amount charged;

(c) any warranty or guaranty and the right to cancel, and the terms of the warranty or guaranty and the right to cancel;

(d) the condition of the hearing aid or related device and whether it is new, used, or reconditioned;

(e) a provision that maintenance service for the hearing aid or related device is available; and

(f) the following statement, in boldface, 12-point type: "If you have any questions regarding your consumer rights with respect to hearing aids and related devices, contact the state Board of Hearing Aid Dispensers." The statement must also list the current telephone number and address of the board's office.

(2) (a) Except as provided in subsection (2)(b), a hearing aid dispenser may not sell a hearing aid to a person unless the person has presented to the hearing aid dispenser a written statement signed by a licensed physician within the previous 6 months that states that the person's hearing loss has been medically evaluated and that the person may benefit from a hearing aid there are no medical factors or conditions that render hearing aid use inadvisable as a treatment or remedy for hearing loss.

(b) If the prospective hearing aid purchaser is 18 years of age or older, the hearing aid dispenser may give that person the opportunity to waive the requirements of subsection (2)(a) in accordance with the disclosure, waiver form, and instructional brochure requirements of the U.S. food and drug administration

regulations found at 42 CFR 801.420 and 42 CFR 801.421."

Section 24. Section 37-17-201, MCA, is amended to read:

"37-17-201. Meetings -- expenses of members -- attorney general as board attorney -- seal. (1)

The board shall hold a regular annual meeting in which it shall select from its members a chairman presiding officer and a secretary. Other regular meetings ~~shall~~ must be held at ~~such the~~ the times ~~as that~~ the rules of the board provide. Special meetings may be held at times considered necessary or advisable by the ~~chairman~~ presiding officer and the majority of its members or on the request of the governor. Reasonable notice of meetings ~~shall~~ must be given in the manner prescribed by the board. ~~The quorum of the board consists of the majority of its members.~~ The department shall keep a record of the board's proceedings.

(2) Each board member ~~shall~~ must receive compensation and travel expenses as provided for in 37-1-133.

(3) The attorney general shall act as attorney for the board. ~~He or his~~ The attorney general or a representative of the attorney general may sit as an ex officio member of the board in an advisory capacity only.

(4) The board shall adopt an official seal."

Section 25. Section 37-17-306, MCA, is amended to read:

"37-17-306. Renewal. (1) The license expires on the date set by department rule. The department shall notify each person licensed under this chapter relative to the date of the expiration and the amount of the renewal fee. This notice must be mailed to each licensed psychologist at the licensee's listed address at least 1 month before the expiration of the license.

(2) Renewal may be made by application during the 60 days prior to the expiration date. Failure on the part of a person licensed to pay the renewal fee by the expiration date does not deprive the person of the right to renew, ~~but the fee must be increased 10% for each month or major portion of a month that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal may not exceed twice the normal renewal fee~~ However, a late fee must be assessed in accordance with board rule. Application for renewal following a lapse of 1 year or more will be subject to review by the board, and the applicant may be requested to successfully complete an examination ~~successfully~~ if the

board so determines."

Section 26. Section 37-18-201, MCA, is amended to read:

"**37-18-201. Organization -- meetings.** (1) A board member ~~shall~~ must receive a certificate of appointment from the governor.

(2) The board shall annually elect from its members a president, ~~vice-president~~ vice president, and secretary-treasurer and shall hold at least two regular meetings each year. ~~At a meeting four members of the board constitute a quorum. If a member of the board, without cause, absents himself from two of its regular meetings consecutively, his office is vacant~~ is absent from two consecutive regular meetings, that member's position on the board is vacated."

Section 27. Section 37-19-202, MCA, is amended to read:

"**37-19-202. Meetings -- quorum -- rulemaking power.** The board shall hold ~~such~~ meetings as may be necessary. ~~Three members constitute a quorum for the transaction of business.~~ The board may adopt and enforce rules to carry out the purposes of this chapter."

Section 28. Section 37-24-201, MCA, is amended to read:

"**37-24-201. Organization -- general rulemaking power -- quorum.** (1) The board of occupational therapy practice shall meet annually and elect a ~~chairman~~ presiding officer and a secretary from its members. The board shall hold other meetings when necessary to transact its business.

(2) The board may adopt rules for the conduct of its affairs and the administration of this chapter. Rule adopted by the board may include ~~such~~ rules ~~as~~ that are reasonable or necessary for the proper performance of its duties and the regulation of proceedings before it.

~~(3) Three board members constitute a quorum for the transaction of business."~~

Section 29. Section 37-26-202, MCA, is amended to read:

"**37-26-202. Board meetings.** (1) The board shall meet at least once annually.

(2) Special meetings may be called by any two board members or the presiding officer.

~~(3) A majority of the board constitutes a quorum for the transaction of business."~~

Section 30. Section 37-28-103, MCA, is amended to read:

"37-28-103. Board meetings -- procedure -- seal. (1) (a) The board shall meet at least once a year ~~and shall elect annually a president, vice president, and secretary-treasurer from its membership.~~ The board may convene at the request of the ~~president~~ presiding officer or at other times the board determines necessary to transact its business.

(b) The governor shall designate the presiding officer of the board.

(2) The board shall adopt a seal by which the board may authenticate its documents."

Section 31. Section 37-30-101, MCA, is amended to read:

"37-30-101. Definitions -- practice of barbering. (1) Unless the context requires otherwise, as used in this chapter the following definitions apply:

(a) "Barbershop" means a place where a person carries on, engages in, practices, or causes to be carried on, engaged in, or practiced the business of barbering.

(b) "Board" means the board of barbers provided for in 2-15-1856.

(c) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(2) Any one or any combination of the following practices, when done upon the human body for tonsorial purposes and not for the treatment of disease or physical or mental ailments and when done for payment, either directly or indirectly, constitutes the practice of barbering:

(a) shaving or trimming the beard;

(b) cutting, styling, coloring, or waving the hair;

(c) straightening of the hair by using chemicals;

(d) giving facial or scalp massage or treatment with oils, creams, lotions, or other preparations, either by hand or mechanical appliances;

(e) ~~singeing or~~ shampooing the hair or applying hair tonic or bleaching or highlighting the hair of ~~male persons~~;

(f) applying cosmetic preparations, antiseptics, powders, oils, lotions, or gels to the scalp, face, hands, or neck.

(3) The practice of cosmetology by a licensed cosmetologist, including cutting the hair of any

person, does not constitute the practice of barbering."

Section 32. Section 37-47-202, MCA, is amended to read:

"**37-47-202. Executive director -- ~~qualifications~~ -- powers and duties.** (1) The department may hire an executive director to assist the board in carrying out its duties under this chapter.

~~(2) The executive director must:~~

~~—— (a) be a citizen of the United States and a resident of Montana;~~

~~—— (b) have knowledge of outfitting and guiding; and~~

~~—— (c) have at least 2 years' experience in management or equivalent training or education.~~

~~(3)~~(2) The duties of the executive director include:

(a) processing and investigating applications for licensure as an outfitter or guide;

(b) conducting investigations of outfitters and guides that involve violations of this chapter or rules of the board and reporting to the board regarding complaints and investigations of complaints;

(c) coordinating inspections, investigations, and training activities of investigators under this chapter; and

(d) coordinating investigations with other local, state, and federal agencies."

Section 33. Section 37-50-201, MCA, is amended to read:

"**37-50-201. Organization -- general rulemaking power -- ~~quorum~~ -- seal -- records.** (1) The board shall elect annually a chairman presiding officer and a secretary from its members.

(2) The board may adopt rules for the conduct of its affairs and the administration of this chapter.

~~(3) A quorum for the transaction of business consists of three members of the board.~~

~~(4)~~(3) The board ~~shall~~ must have a seal ~~which shall~~ that must be judicially noticed.

~~(5)~~(4) The department shall keep records of the board's proceedings. In a proceeding in court, civil or criminal, arising out of or founded on this chapter, copies of these records certified as correct under the seal of the board are admissible in evidence as tending to prove the content of these records."

Section 34. Section 37-51-102, MCA, is amended to read:

"**37-51-102. Definitions.** Unless the context requires otherwise, in this chapter, the following

definitions apply:

(1) "Account" means the real estate recovery account established in 37-51-501.

(2) (a) "Adverse material fact" means a fact that should be recognized by a broker or salesperson as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that:

(i) materially affects the value, affects structural integrity, or presents a documented health risk to occupants of the property; or

(ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.

(b) The term does not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony.

(3) "Board" means the board of realty regulation provided for in 2-15-1867.

(4) "Broker" includes an individual who:

(a) for another or for valuable consideration or who with the intent or expectation of receiving valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

(b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition of real estate for consideration;

(c) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers;

(d) makes the advertising, sale, lease, or other real estate information available by public display to potential buyers and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(f) receives a fee, commission, or other compensation for referring to a licensed broker or salesperson the name of a prospective buyer or seller of real property; or

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(g) advertises or represents to the public that the individual is engaged in any of the activities referred to in subsections (4)(a) through (4)(f).

~~(5) "Broker associate" means a broker who associates, as an employee or independent contractor, with a broker owner and does not own an interest in a real estate firm.~~

~~(6) "Broker owner" means a broker who owns or has a financial interest in a real estate firm.~~

~~(7)~~(5) "Buyer" means a person who is interested in acquiring an ownership interest in real property or who has entered into an agreement to acquire an interest in real property. The term includes tenants or potential tenants with respect to leases or rental agreements of real property.

~~(8)~~(6) "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker agreement, is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent and an in-house buyer agent designate.

~~(9)~~(7) "Buyer broker agreement" means a written agreement in which a prospective buyer employs a broker to locate real estate of the type and with terms and conditions as designated in the written agreement.

~~(10)~~(8) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a buyer.

~~(11)~~(9) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

~~(12)~~(10) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or buyer broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with written authorization, as provided in 37-51-314. An in-house buyer or seller agent designate may not be considered a dual agent.

~~(13)~~(11) "Franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

~~(14)~~(12) "In-house buyer agent designate" means a broker ~~associate~~ or salesperson employed by or associated as an independent contractor with a broker ~~owner~~ and designated by the broker ~~owner~~ as the exclusive agent for a buyer for a designated transaction and who may not be considered to be acting for other than the buyer with respect to the designated transaction.

~~(15)~~(13) "In-house seller agent designate" means a broker ~~associate~~ or salesperson employed by or associated as an independent contractor with a broker ~~owner~~ and designated by the broker ~~owner~~ as the exclusive agent for a seller for a designated transaction and who may not be considered to be acting for other than the seller with respect to the designated transaction.

~~(16)~~(14) "Listing agreement" means a written agreement between a seller and broker for the sale of real estate, with the terms and conditions set out in the agreement.

~~(17)~~(15) "Negotiations" means:

- (a) efforts to act as an intermediary between parties to a real estate transaction;
- (b) facilitating and participating in contract discussions;
- (c) completing forms for offers, counteroffers, addendums, and other writings; and
- (d) presenting offers and counteroffers.

~~(18)~~(16) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

~~(19)~~(17) "Property manager" includes a person who for a salary, commission, or compensation of any kind engages in the business of leasing, renting, subleasing, or other transfer of possession of real estate belonging to others without transfer of the title to the property, pursuant to 37-51-601 and 37-51-602.

~~(20)~~(18) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

~~(21)~~(19) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale, exchange, or lease of an interest in real estate and includes all communication, interposition, advisement, negotiation, and contract development and closing.

~~(22)~~(20) "Salesperson" includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell,

purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

~~(23)~~(21) "Seller" means a person who has entered into a listing agreement to sell real estate and includes landlords who have an interest in or are a party to a lease or rental agreement.

~~(24)~~(22) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

~~(25)~~(23) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a seller.

~~(26)~~(24) (a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real estate transaction without acting as an agent or representative of any party to the real estate transaction.

(b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or has disclosed, as required in this chapter, a relationship other than that of a statutory broker."

Section 35. Section 37-51-209, MCA, is amended to read:

"37-51-209. **Executive secretary -- hiring; and duties; and qualifications.** (1) The department of commerce may hire an executive secretary to carry out duties prescribed by the board pursuant to the board's responsibilities and duties established by law.

~~(2) The person hired to be executive secretary:~~

~~_____ (a) shall possess at least a bachelor's degree from an accredited college or university;~~

~~_____ (b) may not be an officer or paid employee of a real estate association or group of real estate dealers or brokers;~~

~~_____ (c) must be a citizen of the United States of America; and~~

~~_____ (d) must be of good moral character."~~

Section 36. Section 37-51-302, MCA, is amended to read:

"37-51-302. **Broker or salesperson license -- qualifications of applicant.** (1) Licenses may be granted only to individuals considered by the board to be of good repute and competent to transact the business of a broker or salesperson in a manner as to safeguard the interests of the public.

(2) An applicant for a broker's license ~~shall~~:

(a) must be at least 18 years of age;

(b) must have graduated from an accredited high school or completed an equivalent education as determined by the board;

(c) must have been actively engaged as a licensed real estate salesperson for a period of 2 years or have had experience or special education equivalent to that which a licensed real estate salesperson ordinarily would receive during this 2-year period as determined by the board, except that if the board finds that an applicant could not obtain employment as a licensed real estate salesperson because of conditions existing in the area where ~~he~~ the applicant resides, the board may waive this experience requirement;

(d) shall file an application for a license with the department; and

(e) shall furnish written evidence that ~~he~~ the applicant has completed 60 classroom or equivalent hours, ~~in addition to those required to secure a salesperson's license,~~ in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law, real estate finance, and related topics.

(3) The board shall require information it considers necessary from an applicant to determine ~~his~~ honesty, trustworthiness, and competency.

(4) (a) An applicant for a salesperson's license ~~shall~~:

(i) must be at least 18 years of age;

(ii) must have received credit for completion of 2 years of full curriculum study at an accredited high school or completed an equivalent education as determined by the board;

(iii) shall file an application for a license with the department; and

(iv) shall furnish written evidence that ~~he~~ the applicant has completed 60 classroom or equivalent hours in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law and ethics, real estate finance, and related topics.

(b) ~~His~~ The application ~~shall~~ must be accompanied by the recommendation of the licensed broker by whom the applicant will be employed or placed under contract, certifying that the applicant is of good

repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect.

(5) The department shall issue to each licensed broker and to each licensed salesperson a license and a pocket card in a form and size ~~as~~ that the board prescribes.

~~(6) A broker's license must indicate whether the broker is a broker owner or a broker associate."~~

Section 37. Section 37-51-309, MCA, is amended to read:

"37-51-309. Broker owner -- broker associate -- salesperson -- notice to department of change of association. (1) A salesperson may not be associated with or under contract to more than one licensed broker ~~owner, nor may he~~ or perform services for a broker other than the one designated on the license issued to the salesperson.

(2) When a licensed salesperson desires to change ~~his~~ association or contractual relationship from one licensed broker to another, ~~he~~ the salesperson shall notify the department promptly in writing of these facts, pay the required fee, and return ~~his~~ the salesperson's license ~~and pocket card~~, and a new license and pocket card ~~shall~~ must be issued. ~~No~~ A salesperson ~~shall~~ may not directly or indirectly work for or with a broker ~~owner~~ until ~~he~~ the salesperson has been issued a license to work for or with that broker ~~owner~~. On termination of a salesperson's association or contractual relationship, ~~he~~ the salesperson shall surrender ~~his~~ the salesperson's license ~~and pocket card~~ to ~~his~~ the salesperson's broker, ~~owner~~ who shall return ~~them~~ it to the department for cancellation.

(3) Only one license ~~shall~~ may be issued to a salesperson to be in effect at one time.

~~(4) A broker associate may not be associated with more than one broker owner."~~

Section 38. Section 37-51-315, MCA, is amended to read:

"37-51-315. Vicarious liability. (1) A party to a real estate transaction is not liable for a misrepresentation made by the party's agent or subagent unless:

- (a) the party has actual knowledge of the misrepresentation; or
- (b) the agent or subagent is repeating a misrepresentation made by the party.

(2) A broker is not liable for a misrepresentation made by the broker's ~~broker associate~~ or subagent unless:

- (a) the broker has actual knowledge of the misrepresentation;
 - (b) ~~a broker associate~~ the subagent making the misrepresentation is an employee of the broker and not an independent contractor ~~or subagent~~; or
 - (c) a broker ~~associate~~ or subagent is repeating a misrepresentation made by the broker.
- (3) An agent is not liable for a misrepresentation made by the principal unless the agent has actual knowledge of the misrepresentation."

Section 39. Temporary registration of certification and licensure of out-of-state appraisers. (1) The board shall recognize on a temporary basis the certificate or license of an appraiser issued by another state if:

- (a) the appraiser's business in this state is of a temporary nature; and
 - (b) the appraiser registers with the board.
- (2) The out-of-state appraiser shall submit an application for temporary registration on a form prescribed by the board and pay the required fee. In addition, a letter of good standing or license history indicating that the applicant is currently in good standing must be submitted directly to the board's office from the applicant's state of certification or licensure, or the board may obtain a national registry appraiser license history report.
- (3) The temporary registration is valid only for a single appraisal assignment within this state. The temporary registration may be awarded for a 6-month period and renewed one time within the 12-month period following the original date on which the temporary registration was issued.
- (4) A single appraisal assignment may include one or more properties under a single contract with a single client.

Section 40. Section 37-60-201, MCA, is amended to read:

"37-60-201. Organization -- meetings -- records. The board shall meet annually and shall elect from among the seven members a president and a secretary. The board shall hold other meetings when necessary to transact its business. ~~A majority of the board constitutes a quorum at any meeting.~~ The department shall keep complete minutes and records of the meetings and rules and orders promulgated by the board. Copies of records and papers kept by the department, certified by the ~~chairman~~ president and

authenticated by the seal of the board, ~~shall~~ must be received in evidence in courts with like effect as the original. Records of the board are open to public inspection under rules it prescribes."

Section 41. Section 37-65-201, MCA, is amended to read:

"**37-65-201. Organization -- ~~meetings~~ records.** (1) The board ~~must~~ shall, during the first week in April of each year on an annual basis, elect from among its number a president, ~~secretary, and treasurer~~ and ~~must have a seat~~ vice president, and secretary-treasurer.

~~(2) The president and secretary may administer oaths in the examination of applications for certificates and to witnesses called before the board for the transaction of business under this chapter.~~

~~----- (3) The board shall meet at places the board determines during the first week of April of each year and at other times.~~

~~(4)~~(2) The department ~~must~~ shall keep a record of proceedings of the board.

~~(5)~~(3) The department ~~must~~ shall keep a register of applicants for a certificate, with the name of the applicant ~~and age of applicants, the number of years spent in the study of architecture, and whether the applicant was granted a certificate or rejected. The register is prima facie evidence of the matters contained in it."~~

Section 42. Section 37-65-303, MCA, is amended to read:

"**37-65-303. Application -- examination -- issuance of license.** (1) A person wishing to practice architecture in this state shall apply to the department for a license ~~to do so~~. A person applying ~~shall~~ must have successfully completed the requirement of prerequisites in education; and practical experience; and a written examination as prescribed by the board. The examination must be in substantial conformance with the standard national council of architectural registration boards examination and grading procedure, except as modified by board rules.

(2) After examination, the department shall, if the candidate has been found qualified, grant a license to the candidate to practice architecture in this state, which may ~~only~~ be granted only on the consent of not less than two members of the board, ~~attested by the secretary, and have the seal of the board attached."~~

Section 43. Section 37-65-304, MCA, is amended to read:

"37-65-304. **Examination fee -- deposit of fee.** (1) Applicants for examination shall pay in advance to the department a fee set by the board, commensurate with the cost, which shall defray the entire examination expense of the candidate. An applicant failing to pass the examination is entitled to reexamination at the next scheduled examination on payment of a reasonable fee prescribed a fee established by an examination entity and approved by the board.

— (2) The money received from the applicant shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6)."

Section 44. Section 37-65-308, MCA, is amended to read:

"37-65-308. **Seal of architect.** Every licensed architect shall must have a seal; the impression of which that must contain the name of the architect, ~~his or her~~ the city and state of the architect's place of business, the architect's license number, and the words "Licensed Architect, State of Montana", with which he or she shall stamp all drawings and specifications issued from his or her office for use in this state."

Section 45. License verification. Notification to the board by a board-approved entity that the entity has received verification from a state or jurisdiction in which a person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct must be considered verification in compliance with 37-1-304(2).

Section 46. Section 37-66-301, MCA, is amended to read:

"37-66-301. **License required.** In order to safeguard human health and property and to promote the public welfare, ~~any~~ a person in either a public or private capacity practicing or offering to practice landscape architecture ~~for hire shall be~~ is required to submit evidence that ~~he~~ the person is qualified to ~~so~~ practice and ~~shall~~ is licensed ~~be registered~~ under the provisions of this chapter."

Section 47. Section 37-66-304, MCA, is amended to read:

"37-66-304. **Qualifications not required -- application for licensure.** (1) A person wishing to practice landscape architecture in this state shall apply to the department for a license and successfully pass

a written examination established by the board.

(2) Each applicant must be admitted to the examination without prerequisite qualifications."

Section 48. Section 37-66-304, MCA, is amended to read:

"37-66-304. Qualifications ~~not required~~ and application for licensure. (1) A person wishing to practice landscape architecture in this state shall apply to the department for a license.

(2) Each applicant ~~must be admitted to the examination without prerequisite qualifications for licensure~~ must have successfully completed the educational, practical experience, and written examination requirements established by the board."

Section 49. Section 37-67-101, MCA, is amended to read:

"37-67-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of professional engineers and professional land surveyors provided for in 2-15-1873.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Engineer intern" means a person who complies with the requirements for education, experience, and character and has passed an examination in the fundamental engineering subjects, as provided in this chapter.

(4) "Engineering survey" means all survey activities required to support the sound conception, planning, design, construction, maintenance, operation, and association of engineering projects, but excludes the surveying of real property for the establishment of land boundaries, rights-of-way, easements, and the dependent or independent surveys or resurveys of the public land survey system.

(4)(5) "Land surveyor intern" means a person who has qualified for, taken, and passed an examination on the basic disciplines of land surveying, as provided in this chapter.

(5)(6) (a) "Practice of engineering" means:

(i) any service or creative work the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to the services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, planning the use of water, teaching of advanced engineering

subjects, engineering surveys, and the inspection of construction for the purpose of ensuring compliance with drawings and specifications;

(ii) any of the functions described in subsection ~~(5)(a)(i)~~ (6)(a)(i) that embrace the services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of mechanical, electrical, hydraulic, pneumatic, or thermal nature insofar as they involve safeguarding life, health, or property.

(b) The term includes other professional services necessary to the planning, progress, and completion of any engineering services.

(c) The term does not include the work ordinarily performed by persons who operate or maintain machinery or equipment, communication lines, signal circuits, electric powerlines, or pipelines.

~~(6)(7)~~ "Practice of land surveying" means any service or work, the performance of which requires the application of special knowledge of the principles of mathematics, physical sciences, applied sciences, and:

(a) the principles of property boundary law to the recovery and preservation of evidence pertaining to earlier land surveys;

(b) teaching of land surveying subjects;

(c) measurement and allocation of lines, angles, elevations, and coordinate systems;

(d) location of natural and constructed features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water, including work for the determination of areas and volumes;

(e) monumenting of property boundaries;

(f) platting and layout of lands and the subdivisions of land, including the alignment and grades of streets and roads in subdivisions; ~~and~~

(g) preparation and perpetuation of maps, plats, field note records, and property descriptions; and

(h) locating, relocating, establishing, reestablishing, laying out, or retracing of any property line or boundary of any tract of land or road, right-of-way, easement, right-of-way easement, alignment, or elevation of any of the fixed works embraced within the practice of engineering.

~~(7)(8)~~ "Professional engineer" means a person who, by reason of special knowledge and use of the

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mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and engineering experience, is qualified to practice engineering and who has been ~~registered and~~ licensed as a professional engineer by the board.

~~(8)~~(9) "Professional land surveyor" means a person who:

- (a) has been ~~registered and~~ licensed as a land surveyor by the board;
- (b) is a professional specialist in the technique, analysis, and application of measuring land;
- (c) is skilled and educated in the principles of mathematically related physical and applied sciences, relevant requirements of law for adequate evidence, and all requisites to the surveying of real property; and
- (d) is engaged in the practice of land surveying ~~as defined in this section.~~

~~(9)~~(10) "Responsible charge" means direct charge and control and personal supervision either of engineering work or of land surveying. Only a professional engineer or a professional land surveyor may legally assume responsible charge under this chapter."

Section 50. Section 37-67-102, MCA, is amended to read:

"37-67-102. Representation as practitioner to be ~~construed~~ considered as practice. (1) A person ~~shall~~ must be ~~construed~~ considered to practice or offer to practice engineering, within the meaning and intent of this chapter, who:

- (a) practices any branch of the profession of engineering; ~~or who~~
- (b) by verbal claim, sign, advertisement, letterhead, card, or in any other way represents ~~himself to be that the person is~~ a professional engineer or through the use of some other title implies that ~~he the person~~ the person is a professional engineer or ~~that he is registered licensed~~ is licensed under this chapter; or
- (c) ~~who holds himself out~~ represents that the person as is able to perform or ~~who~~ does perform any engineering service or work or any other service designated by the practitioner ~~which that~~ that is recognized as engineering.

(2) ~~Any~~ A person ~~shall~~ must be ~~construed~~ considered to practice or offer to practice land surveying, within the meaning and intent of this chapter, who:

- (a) engages in land surveying; ~~or who~~
- (b) by verbal claim, sign, letterhead, card, or in any other way represents ~~himself to be that the person is~~ a professional land surveyor or through the use of some other title implies that ~~he the person~~ the person is

a professional land surveyor; or

(c) ~~who represents himself as~~ that the person is able to perform or ~~who~~ does perform any land surveying service or work or any other service designated by the practitioner ~~which~~ that is recognized as land surveying."

Section 51. Section 37-67-103, MCA, is amended to read:

"37-67-103. Exemptions. The following are exempt from coverage under this chapter:

- (1) the practice of any other legally recognized professions or trades;
- (2) the mere execution of work by a contractor, as distinguished from its planning or design or the supervision of the construction of work as a ~~foreman~~ lead supervisor or superintendent;
- (3) the work of an employee or a subordinate of a person holding a ~~certificate of registration~~ license under this chapter or an employee of a person practicing lawfully under this chapter, ~~provided such~~ if the work does not include final engineering or land surveying designs or decisions and is done under the direct supervision of a person holding a ~~certificate of registration~~ license under this chapter or a person practicing lawfully under this chapter;
- (4) the practice of professional engineering by licensed architects ~~where~~ when the practice is purely incidental to their practice of architecture."

Section 52. Section 37-67-201, MCA, is amended to read:

"37-67-201. Organization -- meetings -- quorum -- seal. (1) The board shall hold at least two regular meetings each year. Special meetings ~~shall~~ must be held at ~~such the~~ the time ~~as that~~ as the rules of the board ~~may~~ provide. Notice of all meetings ~~shall~~ must be given in ~~such the~~ the manner ~~as that~~ as the rules ~~may~~ provide.

(2) The board shall elect annually the following officers: a ~~chairman~~ presiding officer, a ~~vice-chairman~~ vice presiding officer, and a secretary.

~~(3) A quorum of the board shall consist of not less than five members.~~

~~(4)(3)~~ The board shall adopt ~~and have~~ an official seal."

Section 53. Section 37-67-204, MCA, is amended to read:

"37-67-204. Record of proceedings -- register of applicants. (1) The department shall keep a record of its proceedings and a register of the board's proceedings.

(2) The department shall keep a register of applicants for ~~registration~~ licensure, which ~~shall~~ must show:

- (a) the name, age, and residence of each applicant;
- (b) the date of the application;
- (c) the place of business of the applicant;
- (d) ~~his~~ the applicant's educational and other qualifications;
- (e) the branch or branches of engineering in which the applicant qualified;
- (f) whether an examination was required;
- (g) whether the applicant was rejected;
- (h) whether a ~~certificate of registration~~ license was granted;
- (i) the date of the action of the board; and
- (j) other information considered necessary by the board.

(3) The records of the department are prima facie evidence of the proceedings of the board, and a transcript ~~thereof~~ of the proceedings, certified by the department, is admissible in evidence as if the original were produced."

Section 54. Section 37-67-301, MCA, is amended to read:

"37-67-301. License required to practice or offer to practice. In order to safeguard life, health, and property and to promote the public welfare, ~~any~~ a person in either a public or private capacity practicing or offering to practice engineering or land surveying ~~shall hereafter be~~ is required to submit evidence that ~~he the person~~ the person is qualified ~~so~~ to practice and ~~shall be registered~~ is licensed as hereinafter provided in this chapter. ~~From and after January 1, 1958, it shall be~~ It is unlawful for ~~any~~ a person to practice or to offer to practice in this state engineering or land surveying, ~~as defined in this chapter~~, or to use in connection with ~~his~~ the person's name or otherwise assume, use, or advertise any title or description tending to convey the impression that ~~he the person~~ the person is a professional engineer or a professional land surveyor unless ~~such the~~ the person has been ~~duly registered~~ licensed under the provisions of this chapter."

Section 55. Section 37-67-303, MCA, is amended to read:

"37-67-303. Application -- contents -- fees. (1) Applications for registration licensure must be on forms prescribed by the board and furnished by the department, must contain statements made under oath showing the applicant's education and a detailed summary of the applicant's technical work, and must contain the required references.

(2) The fee for an engineer intern is as prescribed by the board, must accompany the application, and must include the cost of one examination. ~~No~~ An additional fee is not required for the issuance of a certificate.

(3) The application fee for registration licensure as a professional engineer is as prescribed by the board for those holding an engineer intern certificate validated for Montana. For those holding a valid engineer intern certificate from some other state, the application fee is as prescribed by the board, which includes the cost of verification of engineer intern certification or licensure and one examination. Upon approval of an application for registration licensure as a professional engineer, an additional fee equal to the existing renewal fee must be paid before the issuance of a ~~certificate~~ license as a professional engineer.

(4) The department, subject to approval by the board, may, on approval of the application, payment of a fee as prescribed by the board, and payment of an additional fee equal to the appropriate renewal fee, issue a ~~certificate of registration~~ license as a professional engineer to a person who holds a certificate of qualification or registration licensure issued to the person by the committee on national engineering certification of the national council of examiners for engineering and surveying or by a state, territory, or possession of the United States or by another country if the applicant's qualifications meet the requirements of this chapter and the rules of the board.

(5) The fee for a land surveyor intern is as prescribed by the board, which must accompany the application and must include the cost of one examination. ~~No~~ An additional fee is not required for issuance of a certificate.

(6) The application fee for registration licensure as a professional land surveyor is as prescribed by the board for those holding a land surveyor intern certificate validated in Montana. For those holding a valid land surveyor intern certificate from some other state, the application fee is as prescribed by the board, which includes cost of verification of the certification. Upon approval of an application for registration licensure as a professional land surveyor, an additional fee equal to the existing renewal fee must be paid

before the issuance of a ~~certificate~~ license as a professional land surveyor.

(7) The application fee for ~~registration~~ licensure as both a professional engineer and professional land surveyor is as prescribed by the board for those holding engineer intern and land surveyor intern certificates validated in Montana. For those holding valid engineer intern and land surveyor intern certificates from another jurisdiction, the application fee is as prescribed by the board. The fee must accompany the application. Upon approval of an application for ~~registration~~ licensure as a professional engineer and professional land surveyor, an additional fee equal to the existing renewal fee must be paid before the issuance of a ~~certificate~~ license.

(8) If the board denies the issuance of a ~~certificate of registration~~ license to any applicant, the initial fee deposited must be retained as an application fee."

Section 56. Section 37-67-304, MCA, is amended to read:

"37-67-304. Local government not to impose fee or examination. A ~~registration~~ or license fee or examination may not be imposed by a local government on a person ~~registered~~ licensed under this chapter to practice engineering or land surveying."

Section 57. Section 37-67-305, MCA, is amended to read:

"37-67-305. General qualifications of applicants for registration licensure as professional engineer or certification as engineer intern. To be eligible for admission to an examination for professional engineer or engineer intern, an applicant must be of good character and reputation. The applicant ~~must~~ shall submit five references with the application for ~~registration~~ licensure as a professional engineer. Three references must be from professional engineers with personal knowledge of the applicant's engineering experience. In the case of an application for certification as an engineer intern, the applicant shall submit three character references."

Section 58. Section 37-67-306, MCA, is amended to read:

"37-67-306. Qualifications of applicant for registration licensure as professional engineer. The following is considered minimum evidence satisfactory to the board that the applicant is qualified for ~~registration~~ licensure as a professional engineer:

(1) A graduate of an engineering or engineering technology curriculum of 4 years or more approved by the board as being of satisfactory standing, with a specific record of an additional 4 years or more of progressive experience on engineering projects under the direct supervision of a professional engineer, unless exempt under 37-67-320(2), and who has passed examinations of a grade and character that indicate to the board that the applicant may be competent to practice engineering, must be admitted to an 8-hour written examination in the fundamentals of engineering and an 8-hour written examination in the principles and practices of engineering. Upon passing the examinations, the applicant must be granted a ~~certificate of registration~~ license to practice engineering in this state if the applicant is otherwise qualified.

(2) A graduate of a related science curriculum of 4 years or more, other than engineering or engineering technology, with a specific record of 8 years or more of progressive experience on engineering projects of a grade and character that indicate to the board that the applicant may be competent to practice engineering, may be admitted to an 8-hour written examination in the fundamentals of engineering and an 8-hour written examination in the principles and practices of engineering. Upon passing the examinations, the applicant must be granted a ~~certificate of registration~~ license to practice engineering in this state if the applicant is otherwise qualified.

(3) A graduate of an engineering or related science curriculum of 4 years or more, with a specific record of 20 years or more of progressive experience on engineering projects, of which at least 10 of those years ~~have~~ the applicant has been in charge of important engineering projects, of a grade and character that indicate to the board that the applicant may be competent to practice engineering, must be admitted to an 8-hour written examination in the principles and practices of engineering. Upon passing the examination, the applicant must be granted a ~~certificate of registration~~ license to practice engineering in this state if the applicant is otherwise qualified.

(4) Teaching engineering in a college or university offering an approved engineering curriculum of 4 years or more may be considered as engineering experience in these requirements if research, product development, or consulting has been a concurrent activity.

(5) A person who holds a doctorate degree in engineering from an institution with an engineering program approved by the board and the engineering accreditation commission of the accreditation board for engineering and technology or the Canadian engineering accreditation board and who provides a specific record of at least 4 years of progressive experience on engineering projects of a grade and character that

indicate to the board that the applicant may be competent to practice engineering must be admitted to an 8-hour written examination in the principles and practices of engineering. Upon passing the examination, the applicant must be issued a ~~certificate of registration~~ license to practice engineering in this state if the applicant is otherwise qualified."

Section 59. Section 37-67-308, MCA, is amended to read:

"37-67-308. General qualifications of applicants for registration licensure as professional land surveyor or certification as land surveyor intern. (1) To be eligible for admission to an examination for professional land surveyor or land surveyor intern, an applicant must be of good character and reputation. The applicant shall submit five references with the application for ~~registration~~ licensure as a professional land surveyor. Three of the references must be from professional land surveyors having personal knowledge of the applicant's land surveying experience. In the case of an application for certification as a land surveyor intern, the applicant shall submit three references, one of ~~whom~~ which must be from a professional land surveyor having personal knowledge of the applicant's land surveying experience.

(2) The evaluation of a land surveyor applicant's qualifications involves a consideration of the applicant's education, technical and land surveying experience, exhibits of land surveying projects ~~which~~ that the applicant has been in charge of, recommendations by references, and a ~~reviewing~~ review of these categories. The board may require an interview if it considers one necessary."

Section 60. Section 37-67-309, MCA, is amended to read:

"37-67-309. Qualifications of applicant for registration licensure as professional land surveyor. One of the following ~~shall~~ must be considered as minimum evidence to the board that the applicant is qualified for ~~registration~~ licensure as a professional land surveyor:

(1) ~~have~~ The applicant has a bachelor of science degree in a board-approved curriculum that ~~must~~ contains ~~includes~~ a minimum of 40 quarter credit hours in surveying techniques, principles, and practices; ~~and present; the applicant presents~~ evidence satisfactory to the board that, in addition ~~thereto, he the~~ therein, the applicant has had at least 4 years of combined office and field experience in land surveying, with a minimum of 3 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor; ~~and have the applicant has~~ passed the examinations ~~as~~ required by the

board;

(2) ~~have~~ The applicant has 2 years of formal education in a board-approved curriculum above high school level, with at least 90 quarter credit hours that ~~must contain~~ include a minimum of 40 quarter credit hours in surveying techniques, principles, and practices, or equivalent semester hours passed, or the equivalent approved by the board, ~~and present;~~ the applicant presents evidence satisfactory to the board that, in addition ~~thereto, he~~ the applicant has had at least 6 years of combined office and field experience in land surveying satisfactory to the board, with a minimum of 4 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor; ~~and have~~ the applicant has passed the examinations ~~as~~ required by the board;

(3) ~~have~~ The applicant has a bachelor of science degree in a board-approved curriculum and ~~present~~ presents evidence satisfactory to the board that, in addition ~~thereto, he~~ the applicant has had at least 6 years of combined office and field experience in land surveying, with a minimum of 4 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor, and ~~have~~ the applicant has passed the examinations ~~as~~ required by the board; ~~or~~.

(4) ~~present~~ The applicant presents evidence satisfactory to the board that ~~he~~ the applicant has had at least 10 years of combined office and field experience in land surveying satisfactory to the board, with a minimum of 6 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor, and has passed the examinations ~~as~~ required by the board."

Section 61. Section 37-67-310, MCA, is amended to read:

"**37-67-310. Qualifications of applicant for registration certification as land surveyor intern.** To qualify for registration certification as a land surveyor intern, an applicant ~~must~~ shall present as evidence to the board at least one of the following:

(1) a bachelor of science degree in a board-approved curriculum that ~~must contain~~ includes a minimum of 27 semester or 40 quarter credit hours in surveying techniques, principles, and practices and evidence of having passed the written examinations required by the board;

(2) at least 2 years of formal education in an approved curriculum that ~~must contain~~ includes a minimum of 27 semester or 40 quarter credit hours in surveying techniques, principles, and practices, above high school level, with at least 60 semester or 90 quarter credit hours or equivalent semester hours

passed, or the equivalent approved by the board, and evidence of having passed the written examinations required by the board;

(3) a bachelor of science degree in a board-approved curriculum and evidence satisfactory to the board that, in addition, the applicant has had at least 2 years of combined office and field experience in land surveying, with a minimum of 1 year in charge of land surveying projects under the supervision of a professional land surveyor, and evidence of having passed the written examinations required by the board; or

(4) evidence satisfactory to the board that the applicant has had at least 6 years of combined office and field experience in land surveying, with a minimum of 4 years of experience in charge of land surveying projects; under the supervision of a professional land surveyor, and evidence of having passed the examinations required by the board."

Section 62. Section 37-67-311, MCA, is amended to read:

"37-67-311. Examinations. Examination requirements are as follows:

(1) The examinations must be held at times and places ~~as~~ that the board directs. The board shall determine the acceptable grade on examinations.

(2) Written examinations may be taken only after the applicant has met the other minimum requirements as ~~given~~ provided in 37-67-305 through 37-67-310 and has been approved by the board for admission to the examinations as follows:

(a) The examination on engineering fundamentals consists of an 8-hour examination ~~on the fundamentals of engineering~~. Passing the examination qualifies the examinee for an engineer intern certificate if the examinee has met all other requirements for certification required by this chapter.

(b) The examination on principles and practice of engineering consists of an 8-hour examination on applied engineering. Passing this examination qualifies the examinee for ~~registration~~ licensure as a professional engineer if the examinee has met the other requirements for ~~registration~~ licensure required by this chapter.

(c) The examinations for land surveyor intern consist of two 4-hour examinations, designated as parts I and II, on the basic disciplines of land surveying. Passing these examinations qualifies the examinee for a land surveyor intern certificate if the examinee has met all other requirements for ~~certificates~~

certification required by this chapter.

(d) The requirements and examinations for professional land surveyor consist of being a land surveyor intern, ~~of~~ two examinations, designated as parts III and IV, on the applied disciplines of land surveying, and ~~of~~ an examination specifically related to land surveying in Montana. Passing these examinations qualifies the examinee for registration licensure as a professional land surveyor if the examinee has met the other requirements for registration licensure required by this chapter.

(3) A candidate failing one examination may apply for reexamination, which may be granted upon payment of a fee established by the board. Before readmission to the examination in the event of a second failure, the examinee ~~must~~ shall wait 1 year before a third examination.

(4) A candidate failing three examinations may not be allowed readmission to the examination. The candidate may apply for a special circumstance waiver from the board to be readmitted to the examination."

Section 63. Section 37-67-312, MCA, is amended to read:

"37-67-312. Licensure of professional engineers without examination by comity or endorsement.

(1) A person holding a certificate of registration to engage in the practice of engineering issued to the person by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or any foreign country, based on requirements that do not conflict with the provisions of this chapter and that were of a standard not lower than that specified in the applicable registration act in effect in this state at the time the certificate was issued, may upon application be ~~registered~~ licensed without further examination.

(2) A person holding a certificate of qualification issued by the committee on national engineering certification of the national council of examiners for engineering and surveying and whose qualifications meet the requirements of this chapter may upon application be ~~registered~~ licensed without further examination."

Section 64. Section 37-67-314, MCA, is amended to read:

"37-67-314. Issuance of ~~certificates~~ licenses -- seal of professional engineer or professional land surveyor -- enrollment card for interns. (1) The department shall issue to ~~any~~ an applicant who, in the opinion of the board, has met the requirements of this chapter a ~~certificate of registration~~ license giving the

~~registrant licensee~~ proper authority to engage in the practice of engineering or the practice of land surveying and to assume responsible charge of engineering or land surveying projects in this state. The ~~certificate of registration~~ license for a professional engineer must carry the designation "professional engineer" and for a professional land surveyor, "professional land surveyor". It must give the full name and serial number of the ~~registrant licensee~~ and must be signed by the presiding officer and the secretary under the seal of the board.

(2) ~~This certificate~~ A license is prima facie evidence that the named person is entitled to all rights, privileges, and responsibilities of a professional engineer or professional land surveyor while the ~~certificate of registration~~ license remains unrevoked or unexpired.

(3) Each ~~registrant licensee~~ may, upon ~~registration licensure~~, obtain a seal of a design authorized by the board, bearing the ~~registrant's licensee's~~ name, serial number, and the legend "professional engineer" or "professional land surveyor". Plans, specifications, plats, drawings, reports, design information, and calculations prepared by a ~~registrant licensee~~ must ~~when issued~~ be signed with a written signature, dated, and stamped with the seal or a seal facsimile when issued. ~~It~~ After the expiration of a license, it is unlawful for a registrant the licensee whose license has lapsed to affix or permit the seal and signature or seal facsimile to be affixed to any:

- (a) plans, specifications, plats, drawings, reports, design information, or calculations; or
- (b) projects for which the licensee was not in responsible charge after the expiration of a certificate ~~or for projects for which the registrant was not in responsible charge.~~

(4) The department shall issue to any applicant who, in the opinion of the board, has met the requirements of this chapter an enrollment card as an engineer intern or land surveyor intern. The enrollment card must indicate that the applicant's name and status has been recorded with the board. The enrollment card does not authorize the holder to practice as a professional engineer or professional land surveyor."

Section 65. Section 37-67-315, MCA, is amended to read:

"37-67-315. Biennial renewal -- fee -- statement of competency. (1) ~~Certificates of registration~~ Licenses expire every second year on the date established by rule of the department and become invalid on that date unless renewed. The department shall notify each person ~~registered~~ licensed under this chapter of the date of the expiration of the person's ~~certificate~~ license and the amount of the fee required for its

renewal for 2 years. This notice must be mailed at least 1 month in advance of the date of the expiration of the certificate license. Renewal may be made prior to the expiration date by the payment of a fee as set by the board for either a professional engineer or a professional land surveyor. For renewal of a dual license as both a professional engineer and a professional land surveyor, the fee must be set by the board.

(2) A certificate license may not be renewed unless the registrant submits a statement to the effect and the board is satisfied that the registrant licensee has maintained competency by:

(a) the continued practice of engineering or land surveying; and

(b) engaging in other activities that provide for the maintenance of competency if prescribed by board rule, such as continuing education, which may require up to 15 professional development hours as prescribed by board rule and is generally patterned after the model rules of the national council of examiners for engineering and surveying.

(3) Failure on the part of a registrant licensee to renew the certificate license biennially prior to the expiration date does not deprive the registrant licensee of the right of renewal; however, a registrant licensee who fails to pay the renewal fee for an additional year of the biennium is considered a new applicant and is required to submit a new application.

(4) The fee for any registrant licensee who fails to renew the certificate license prior to the expiration date must be increased by an amount not to exceed 50% of the renewal fee. Renewal may not be completed until all fees are paid."

Section 66. Section 37-67-316, MCA, is amended to read:

"37-67-316. **Replacement of lost or destroyed certificate or license.** A new certificate of registration or license to replace a certificate or license revoked, lost, destroyed, or mutilated may be issued by the department, subject to the rules of the board."

Section 67. Section 37-67-318, MCA, is amended to read:

"37-67-318. **Roster of licensees to be published by department.** A roster showing the names and addresses of registered licensed professional engineers and registered licensed professional land surveyors ~~shall~~ must be published by the department. Copies ~~shall~~ must be placed on file with the secretary of state, and the clerk of each incorporated city and town, and in the office of each county clerk and recorder within

the state and furnished to each person ~~registered~~ licensed and to the public, on request, at a fee established by the board."

Section 68. Section 37-67-320, MCA, is amended to read:

"37-67-320. Firms Sole proprietorships, firms, partnerships, and corporations -- requirements -- exceptions. (1) A sole proprietorship, firm, partnership, or corporation:

(a) may engage in the practice of engineering in this state if the sole proprietor or any member of the firm, partnership, or corporation who is in responsible charge of engineering or land surveying work performed in this state is a professional engineer or a professional land surveyor, as appropriate;

(b) must have a professional engineer or professional land surveyor in residence who is in responsible charge of the engineering or land surveying work conducted in the office or place of business if the sole proprietorship, firm, partnership, or corporation is engaged in the practice of engineering or the practice of land surveying; and

(c) shall obtain a certificate of authorization from the board before engaging in the practice of engineering or the practice of land surveying.

(2) The provisions of subsection (1) do not apply to sole proprietorships, firms, partnerships, or corporations that are engaged in the practice of engineering or the practice of land surveying for their own benefit and do not practice or offer engineering or land surveying services to others."

Section 69. Section 37-67-321, MCA, is amended to read:

"37-67-321. Emeritus status. (1) A registrant licensee who ~~has terminated his practice of~~ no longer practices engineering or land surveying may apply to the board for emeritus status.

(2) Upon receiving an application for emeritus status accompanied by the fee established by the board, the board shall issue a certificate license of emeritus status to the applicant and record the applicant's name in the roster as an emeritus ~~registrant licensee~~, along with the date ~~he~~ on which the licensee received emeritus status.

(3) An emeritus registrant licensee may retain but may not use ~~his~~ the licensee's seal and may not practice engineering or land surveying.

(4) The board shall reissue a ~~certificate of registration license~~ to an emeritus ~~registrant licensee~~ who

pays all application fees, meets all current requirements for ~~registration~~ licensure, and demonstrates to the board's satisfaction that for the 2 years preceding ~~his~~ the application for ~~registration~~ he licensure, the applicant has met the requirements for maintaining professional competence established under 37-67-315."

Section 70. Section 37-67-331, MCA, is amended to read:

"37-67-331. Revocation, suspension, or refusal to renew certificate license -- grounds -- procedure -- reinstatement. (1) The board may reprimand a licensee or revoke, suspend, or refuse to renew the certificate license of a ~~registrant~~ licensee found responsible for:

- (a) fraud or deceit in obtaining a ~~certificate of registration~~ license;
- (b) gross negligence, incompetency, or misconduct in the practice of engineering or land surveying as a ~~registered~~ licensed professional engineer or professional land surveyor;
- (c) a felony;
- (d) a violation of rules for professional conduct for professional engineers and professional land surveyors adopted by the board;

(e) failing to comply with the Corner Recordation Act if the person is a professional land surveyor.

(2) Any person may make charges of fraud, deceit, gross negligence, incompetency, or misconduct against a ~~registrant~~ licensee. The charges must be made by affidavit, subscribed and sworn to by the person making them, and filed with the department. The charges must be investigated by the board. For purposes of investigation under this section, the board may require that a ~~registrant~~ licensee meet with the board.

(3) The board may require a ~~registrant~~ licensee to take a written or oral examination, or both, in a proceeding to reprimand the licensee or to revoke, suspend, or refuse to renew the ~~certificate of registration~~ license.

(4) If, after a hearing, five or more members of the board vote in favor of sustaining the charges, the board shall reprimand; the licensee or suspend, refuse to renew, or revoke the ~~certificate of registration~~ license of the ~~registered~~ licensed professional engineer or professional land surveyor.

(5) The board, for reasons it considers sufficient, may reissue a ~~certificate of registration~~ license to a person whose ~~certificate~~ license has been revoked if five or more members of the board vote in favor of the reissuance."

Section 71. Section 37-67-332, MCA, is amended to read:

"37-67-332. Violations -- penalties -- enforcement. (1) (a) A person commits a criminal offense if the person knowingly:

- (i) practices or offers to practice engineering or land surveying in this state without being ~~registered~~ licensed under this chapter;
- (ii) presents or attempts to use the ~~certificate of registration~~ license or the seal of another person;
- (iii) gives false or forged evidence to the board or department in obtaining a ~~certificate of registration~~ license;
- (iv) impersonates another ~~registrant~~ licensee;
- (v) attempts to use an expired, revoked, or emeritus ~~certificate of registration~~ license; or
- (vi) violates a provision of this chapter.

(b) A person convicted under subsection (1)(a) shall ~~on conviction~~ be fined an amount of not less than \$100 or more than \$500 or be incarcerated in the county jail for a period not exceeding 3 months, or both.

(2) All officers of the law of this state or one of its political subdivisions shall enforce this chapter and prosecute persons violating it. The attorney general shall act as legal adviser of the board and render legal assistance necessary in carrying out this chapter.

(3) The board may apply to the appropriate court for an injunction against a person found by the board to have practiced or attempted or offered to practice engineering or land surveying in this state without a valid ~~certificate of registration~~ license.

(4) If a person violates an injunction against practice without a valid ~~certificate of registration~~ license, the court may impose a fine in an amount not to exceed \$25,000."

Section 72. Section 37-68-201, MCA, is amended to read:

"37-68-201. Organization -- meetings -- ~~quorum~~ -- rulemaking power -- seal. (1) Each July, the board shall elect from its membership a president, vice president, and secretary-treasurer.

(2) The board shall meet quarterly and at other times it considers necessary.

~~(3) A majority of the members of the board shall constitute a quorum for transaction of business.~~

~~(4)~~(3) The board may:

- (a) adopt rules for the administration of this chapter, for the licensing of electrical contractors, and for the examination and licensing of master and journeymen electricians;
- (b) adopt a seal;
- (c) cause the prosecution and enjoinder of persons violating this chapter."

Section 73. Section 37-69-201, MCA, is amended to read:

"37-69-201. ~~Chairman~~ ~~quorum~~ Presiding officer. ~~(1)~~ The board shall annually select a ~~chairman~~ presiding officer from its members.

~~(2) A majority of the board constitutes a quorum."~~

Section 74. Section 70-22-103, MCA, is amended to read:

"70-22-103. **Definitions.** Except ~~where~~ when the context indicates a different meaning, terms used in this part ~~shall~~ must be defined as follows:

(1) An "accessory to a corner" ~~is~~ means any exclusively identifiable physical object whose spatial relationship to the corner is recorded. Accessories may be bearing trees, bearing objects, monuments, reference monuments, line trees, pits, mounds, charcoal-filled bottles, steel or wooden stakes, or other objects.

(2) The "board" ~~is~~ means the board of professional engineers and professional land surveyors; provided for in 2-15-1873.

(3) A "corner", unless otherwise qualified, means a property corner or a property controlling corner or a public land survey corner or any combination of these.

(4) A "monument" ~~is~~ means an accessory that is presumed to occupy the exact position of a corner.

(5) A "property controlling corner" for a property ~~is~~ means a public land survey corner or any property corner ~~which~~ that does not lie on a property line of the property in question but ~~which~~ that controls the location of one or more of the property corners of the property in question.

(6) A "property corner" ~~is~~ means a geographic point on the surface of the earth and is on, is a part of, and controls a property line.

(7) A "public land survey corner" ~~is~~ means any corner actually established and monumented in an original survey or resurvey used as a basis of legal description for issuing a patent for the land to a private person from the United States government.

(8) A "reference monument" ~~is~~ means a special monument that does not occupy the same geographical position as the corner itself but whose spatial relationship to the corner is recorded and ~~which~~ that serves to witness the corner.

(9) A "~~registered~~ surveyor" ~~is~~ means a surveyor person who is ~~registered~~ licensed to practice land surveying under Title 37, chapter 67, and has a paid-up license for that calendar year or who is authorized under Title 37, chapter 67, to practice land surveying."

Section 75. Repealer. Sections 10-1-605, 37-2-111, and 37-66-305, MCA, are repealed.

Section 76. Codification instruction. (1) [Section 7] is intended to be codified as an integral part of Title 37, chapter 1, part 3, and the provisions of Title 37, chapter 1, part 3, apply to [section 7].

(2) [Section 39] is intended to be codified as an integral part of Title 37, chapter 54, part 2, and the provisions of Title 37, chapter 54, part 2, apply to [section 39].

(3) [Section 45] is intended to be codified as an integral part of Title 37, chapter 65, part 3, and the provisions of Title 37, chapter 65, part 3, apply to [section 45].

Section 77. Effective dates. (1) [Sections 11, 75, and 76 and this section] are effective on passage and approval.

(2) [Sections 1 through 7, 12 through 47, and 49 through 74] are effective October 1, 2001.

(3) [Section 48] is effective October 1, 2005.

Section 78. Termination. [Section 47] terminates September 30, 2005.

- END -